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Reply to: Miami Office

June 12, 2001

Admiral James M. Loy USCG
Commandant, U.S. Coast Guard
c/o Executive Secretary the Marine Safety Council
of the United States Coast Guard
2100 Second Street Southwest, Room 3406
Washington D.C. 20593-0001

RE: Petition for Rulemaking in accordance with 33 CFR §1.05-20(a); Petition for Revision to 46 CFR Part 15 to Establish a Federal Pilotage Requirement for Foreign Vessels and U.S. Vessels Sailing on Register in Certain Designated Waters Within the United States Virgin Islands

Dear Admiral Loy,

On behalf of the members of the public identified below, pursuant to the provisions of Title 46, Code of Federal Regulations, §1.05-20(a), we hereby petition the United States Coast Guard under take a rule making action.

Specifically, we petition the United States Coast Guard to initiate a rule making action to revise the provisions of Title 46, Code of Federal Regulations, Part 15, to establish a federal pilotage requirement for foreign vessels and U.S. vessels sailing on register in certain designated waters within the U.S. Virgin Islands. The requested rule making action would require foreign vessels and U.S. vessels sailing on register, in excess of 1600 gross tons, operating on the navigable waters of the United States in St. Thomas Harbor, Frederiksted Harbor, Christiansted Harbor, Krause Lagoon and Limetree Bay, U.S. Virgin Islands, to be under the direction and control either of a pilot licensed by the Government of the U. S. Virgin Islands or a federally licensed, first class pilot.

Inasmuch as these vessels are already paying full pilotage, but not always receiving pilot services, a requirement for these vessels to actually receive the services for which they are already paying would result in no additional financial burden while substantially increasing navigational safety.

Introduction

In past correspondence, discussions and meetings with Commander, Seventh Coast Guard District and COTP San Juan, we have documented an increasing number of near collisions and close quarters situations on these waters involving large, foreign flag cruise ships with thousands of U. S. passengers aboard. Other communications have addressed a lack of available tug resources of adequate horsepower to escort and dock large cruise ships, container ships and car carriers in windy conditions; inadequate bridge to bridge communications; difficulties in regulating ship movements; one cruise ship grounding and a number of near groundings as well as other worsening navigational safety issues which make it clear that a major marine casualty in the U. S. Virgin Islands is only a matter of time.

We have supported efforts by COTP San Juan to address concerns about the safety of navigation in these waters through local harbor safety committees. However, for the reasons discussed in more detail below, these efforts have failed.

Even as the size and number of foreign flag cargo vessels, container ships and cruise ships operating on these environmentally sensitive waters has markedly increased, the agency of the Government of the U. S. Virgin Islands charged with the responsibility for port operations and navigational safety, the Virgin Islands Port Authority (VIPA), has gone on record saying, with the exception of limited categories of vessels such as those carrying explosives, there are no compulsory or mandatory pilotage requirements for foreign flag vessels entering and leaving the ports of the U. S. Virgin Islands and that the utilization of government pilots by such vessels is on a strictly voluntary basis. Moreover, senior managers of VIPA have publicly stated that they oppose mandatory pilotage because they do not see use of a government pilot by foreign flag vessels as contributing to navigational safety and, of late, they have taken to actively discouraging foreign flag vessels from taking a government pilot when they depart.

Thus, the situation is clear. Although VIPA currently maintains a group of government pilots (federally licensed, first class pilots) available for use by foreign flag vessels on a voluntary basis, under current VIPA interpretation, there is no statute, rule or regulation of the U. S. Virgin Islands that requires any foreign commerce vessel, whether foreign flag or U. S. flag, to utilize a government pilot, or any pilot, when entering or leaving the ports of the U. S. Virgin Islands. To the contrary, VIPA managers, under many circumstances, actively discourage large foreign flag cruise ships and cargo vessels from using the services of a government pilot.

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Based on the previously published and clearly stated policy of the U. S. Coast Guard, this is an unsafe and unacceptable practice from the perspective of navigational safety, and presents an unacceptable risk to the safety of passengers, crewmembers, property and the marine environment.

Background

By our letters dated March 3, 2000, two separate requests were submitted to the Commander, Seventh Coast Guard District, for the establishment of Regulated Navigation Areas (RNA) in St. Thomas and St. Croix. The first RNA requested would have required certain vessels to be under the direction and control of a licensed, first class pilot on the waters of St. Thomas Harbor, U.S. Virgin Islands (see Exhibit "A" and the Affidavits attached thereto). The second request addressed similar requirements for the waters of Frederiksted Harbor, Christiansted Harbor, Krause Lagoon and Limetree Bay, St. Croix, U.S. Virgin Islands. (See, Exhibit "B" attached hereto). As set forth in more detail in Exhibits "A" and "B", the individuals submitting these requests for the establishment of regulated navigation areas were all licensed, first class pilots who are seriously concerned about near collisions, groundings, lack of bridge to bridge radio telephone communications, large foreign flag passenger vessels and cargo vessels operating without a pilot and other significant threats to navigational safety and to the safety of marine environment on the waters of the U. S. Virgin Islands.

By his letter dated June 26, 2000, (Exhibit "C"), Commander, Seventh Coast Guard District determined that a public rule making in the form of a regulated navigation area was not warranted nor an appropriate mechanism to address the concerns expressed in Exhibits "A" and "B".

By our letter of July 19, 2000, (Exhibit "D"), we requested Commander, Seventh Coast Guard District to reconsider that decision. By separate correspondence dated July 26, 2000, we also submitted an appeal of that decision to the Commandant, U.S. Coast Guard. (Exhibit "E").

By his letter dated July 31, 2000, (Exhibit "F"), Commander, Seventh Coast Guard District denied our request for reconsideration of his decision to deny our request for the establishment of regulated navigation areas and forwarded our appeal to the Commandant. By letter dated October 25, 2000, the Commandant denied our appeal of the decision of the Commander, Seventh Coast Guard District. (Exhibit "G") However, in

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his letter 5800, dated October 25, 2000, the Commandant invited us to petition the U.S. Coast Guard to under take the rule making action requested herein to establish federal pilot regulations for vessels engaged in foreign commerce if they are operating on navigable waters of United States located within the U.S. Virgin Islands. This letter, therefore, is in response to that suggestion by the Commandant, U.S. Coast Guard.

The Harbor Safety Committee Process

As reflected in the various correspondence from the Commander, Seventh Coast Guard District, (Exhibits "C" and "F"), and the Commandant, (Exhibit "G"), it is clear that one of the reasons why no regulatory action was undertaken by the U.S. Coast Guard when requested was their desire to give the harbor safety committees being established by COTP San Juan in St. Thomas and St. Croix some time to address the problem. However, for the reasons set forth in more detail below, it is now clear that this effort has ended in failure.

Moreover, the Virgin Islands Port Authority (VIPA) has now stated in writing that the Marine Rules and Regulations of the U.S. Virgin Islands do not mandate pilot service aboard foreign commerce vessels, with the exception of certain vessel carrying explosives. In other words, the Virgin Island Port Authority's stated policy is that they will provide government pilot service to any vessel that formally requests such service but, with certain limit exceptions, there is no mandatory pilot requirement in the U.S. Virgin Islands. Moreover, the Virgin Islands Port Authority has also made it clear that, notwithstanding what ever consensus may be reached by the applicable harbor safety committee, the Virgin Islands Port Authority will make its own decisions with regard to pilot regulations in the U.S. Virgin Islands and does not feel bound or constrained by their participation in the harbor safety committee's process to implement any recommendations or to give effect to any consensus reached. Such an attitude on the part of the Virgin Islands Port Authority, in essence, effectively renders the harbor safety committee process irrelevant.

The need for clear, unambiguous pilotage requirements for vessels in the U.S.V.I. was first identified by the U. S. Coast Guard in the fall of 1999. Both the U. S. Coast Guard and the government pilots read the provisions of the VIPA Marine Rules and Regulations to require vessels to make use of a pilot. However, the U. S. Coast Guard sought discussions with VIPA on clarification of the size of vessels which would be subject to mandatory pilotage as well as the circumstances under which they would take a pilot. Discussions with VIPA, however, resulted in a series of statements which were, at best,

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ambiguous as to the position of VIPA regarding which vessels were required to make use of the services of a government pilot. This ambiguity led the pilots to request the U. S. Coast Guard to address the issue through establishing an RNA in each harbor.

The federally licensed, first class pilots who requested the Commander, Seventh Coast Guard District to establish clear, unambiguous pilot standards, requirements and regulations requiring that certain vessels be under the control of a federally licensed pilot were disappointed by his decision not to do so. The pilots saw their position as supporting the U. S. Coast Guard who had identified the need for clear, unambiguous pilot standards, requirements and regulations.

However, in his letter dated June 19, 2000, (Exhibit "H"), to the government pilots in St. Thomas and St. Croix , the Captain of the Port, San Juan, indicated his agreement with the need for safety planning, a pilot training program and other clear standards. However, the Captain of the Port, San Juan, indicated that he wished to attempt to accomplish this through the use of a harbor safety committee process and, in meetings both in St. Thomas and St. Croix, asked the pilots to work with him towards those goals. Accordingly, the pilots committed themselves to a good faith participation in this process in order to achieve their goals, shared with the U. S. Coast Guard, of clear, unambiguous pilotage standards, requirements and regulations.

As reflected in his letter 16705, dated August 10, 2000, Lt. Kevin Smith, USCG, Supervisor, U. S. Coast Guard Marine Safety Detachment, St. Thomas, provided the members of the St. Thomas Harbor Safety Committee with the minutes of the July 27, 2000, St. Thomas Harbor Safety Committee meeting. Among other things, paragraph one of his letter establishes that one of the issues identified and discussed by the Harbor Safety Committee as a problem to be addressed by the committee was the lack of communication on the part of all types of vessels. Specifically, vessels were not placing "securité" calls and were not properly monitoring channel 16. The Harbor Safety Committee also identified the problem of a language barrier between recreational and commercial vessels which, in their view, would be corrected to a large extent by placement of pilots on more commercial vessels. Lt. Smith's letter goes on to record that the Harbor Safety Committee also discussed a problem with unregulated ship movements as the result of the foreign captains of cruise ships frequently departing with no pilot on board.

As reflected in the minutes of the July 27, 2000 Harbor Safety Committee meeting, this practice has resulted in several near misses between cruise ships, demonstrating to

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the members of the Harbor Safety Committee that St. Thomas has been very lucky to avoid a major disaster and indicating more control must be placed in the movement of commercial ships. Lt. Smith's letter also reflects a discussion of the Harbor Safety Committee that the USVI pilot regulations must be revised and updated.

By his letter 16705, dated August 31, 2000 Lt. Smith provided the members of the Harbor Safety Committee with the minutes of the August 27, 2000 St. Thomas Harbor Safety Committee meeting. The Harbor Safety Committee meeting again discussed the proposal submitted by the St. Thomas Pilots to revise and update the local pilot regulations. As set forth in paragraph eleven of his letter, Lt. Smith reported that "there were no objections by any party at the meeting to placing a pilot on all vessels over 1600 gross tons. Tropical, WICO, Deliver-it agents were present at the meeting."

As reflected in the letters authored by the Supervisor, United State Coast Guard, Marine Safety Detachment St. Thomas, the St. Thomas Harbor Safety Committee, in its early meetings, clearly identified serious navigational safety problems arising from lack of communication between all types of vessels, near misses, unregulated ship movement and foreign flag cruise ships departing without pilots on board. The letters of the Supervisor, U.S. Coast Guard Marine Detachment St. Thomas also establish that, at the August 27, 2000, meeting of the Harbor Safety Committee that there was a consensus of the attendees at the meeting, including all the agents of the cargo vessel and cruise ship operators present at the meeting, that it would be appropriate to address these problems by placing pilots on all vessels over 1600 gross tons.

This consensus of the St. Thomas Harbor Safety Committee was communicated by letter to the Virgin Islands Port Authority by Pilot Eric Robinson.

By her letter dated September 8, 2000 Virgin Islands Port Authority St. Thomas Marine Manager Maria Walters informed Pilot Robinson that "... the Marine Rules and Regulations ... do not currently mandate pilot service aboard vessels greater than 100 gross register tons." (Exhibit "I") By this letter, the Virgin Islands Port Authority took the position that the laws of the Virgin Islands do not provide for a mandatory pilot and, with the exception of certain limited classes of vessel such as those carrying explosives, pilot service to any vessel was strictly voluntary based on a request for such service by the vessel.

In order to confirm and clarify the position taken by the Virgin Islands Port Authority, we wrote to Virgin Islands Port Authority Marine Manager Maria Walters on

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September 12, 2000. In our letter, (Exhibit "J"), we asked Ms. Walters to confirm that it is the position of the Virgin Islands Port Authority that a government pilot aboard vessels greater than 100 gross tons entering and leaving the port of St. Thomas was not mandatory, that the service of a pilot aboard such vessels is voluntary and that VIPA policy is to provide pilot service only to vessels that formally request such service. In addition, we requested the Virgin Islands Port Authority to confirm their apparent position that VIPA would not accede to, follow or implement the consensus recommendations of the Harbor Safety Committee with regard to navigational safety or vessel traffic management issues, notwithstanding the fact that such recommendations constitute a consensus of the port users.

By his letter dated September 18, 2000, Mr. Don C. Mills, legal counsel for the Virgin Islands Port Authority confirmed the position of the Virgin Islands Port Authority with regard to the interpretation of existing U.S. Virgin Islands regulations. Specifically, in his letter, Exhibit "K", Mr. Mills reiterated that "...a pilot will be provided for any vessel in excess of 100 gross tons requesting same, unless the vessel falls into one or other of the "mandatory" categories (e.g., carrying explosives,) or unless the Marine Manager determines that the pilot should be provided because of circumstances. Otherwise, only upon request of the vessel will a pilot be provided." Accordingly, the Virgin Islands Port Authority, has stated, in writing, not once, but twice, that, with the exception of certain limited, mandatory categories, there is no such thing as a compulsory pilot for vessels in the U.S. Virgin Islands.

Mr. Mills' letter, Exhibit "K", further confirms that it is the position of the Virgin Islands Port Authority that the Port Authority does not in any way commit itself, by participation in the Harbor Safety Committee process, to adopting or implementing any recommendations submitted to it by the Harbor Safety Committee. Thus, notwithstanding the fact the Virgin Islands Port Authority has committed itself to participation in the Harbor Safety Committee process, the Port Authority reserves to itself the implementation of any consensus recommendation on a case by case basis. Such intransigence on the part of VIPA has severely damaged the harbor safety committee process. There seems to be little point to spending time and effort to study a problem and develop a consensus with regard to a solution when VIPA refuses to commit itself to implementing the result. Their refusal to acknowledge the consensus of the committee with regard to the need for pilots, or to even acknowledge that pilots play an important role in navigational safety, seriously damaged both the credibility of VIPA and that of the harbor safety committee process.

After this exchange of correspondence with regard to pilot regulations, given the position taken by VIPA, any meaningful discussion of implementing mandatory pilot regulations in the St. Thomas Harbor Safety Committee came to a halt. At the urging of the Coast Guard, the Harbor Safety Committee appointed a "subcommittee" to discuss pilot issues, without any pilot members being appointed to such a subcommittee. Thereafter, the issue of updating the local pilot regulations to provide clear, unambiguous pilotage standards, requirements and regulations languished "in committee". No progress has been made even as the number of near misses, close calls and other threats to navigational safety have increased.

Frustrations of the federally licensed pilots in St. Thomas and St. Croix with the apparent futility of the Harbor Safety Committee process were heightened by recent action taken by the Commanding Officer, Marine Safety Office San Juan.

As reflected in his memorandum dated March 15, 2000, attached hereto as Exhibit "L", the Commanding Officer of U.S. Coast Guard MSO San Juan has directed the Commanding Officer of the Regional Examination Center in Miami to increase the regulatory standards and experience prerequisites for a federal first class pilot license for the U.S. Virgin Islands from a current requirement for a third mates license to a new requirement for a second mates license.

It is interesting to note that this issue was never raised at the Harbor Safety Committee, never discussed by the Harbor Safety Committee and never raised or discussed with the licensed, federal first class pilots in either St. Thomas or St. Croix. Accordingly, a perception has developed on the part of such pilots that referring regulatory issues for discussion to the Harbor Safety Committee is an important prerequisite to such a regulatory process when the U.S. Coast Guard wishes to avoid or defer such action. On the other hand, apparently, when the U.S. Coast Guard wishes to take regulatory action it does so unilaterally and without either notice to or discussion with the Harbor Safety Committee or members of the industry affected by such regulatory proposals. Accordingly, this action has also seriously weakened the credibility of the harbor safety committee process.

Moreover, it is extremely interesting to note the language of the COTP San Juan memorandum. (Exhibit "L") While noting that the ports of the U.S. Virgin Islands are "... vital to the people, the resources, and the economies of not just Puerto Rico and the Virgin Islands but the entire Caribbean". COTP San Juan goes on to note that it is critical to ensure that federal pilots have the "... requisite knowledge, skills and experience to

successful carry out their responsibility". According to COTP San Juan, the current requirement of holding a valid third mates license "... does not reflect the unique and critical nature of piloting vessels into or out of the ports in Puerto Rico and the U.S. Virgin Islands. A higher level of skill and experience is required."

We find this language particularly interesting. Apparently, the Captain of the Port of San Juan clearly recognizes the importance of the ports of the Virgin Islands, and the unique and critical nature of piloting vessels into or out of the ports of the U.S. Virgin Islands. COTP San Juan also clearly acknowledges the high level of skill and experience required to engage in such pilot activities. At the same time, however, COTP San Juan has steadfastly refused to acknowledge any need to actually require that such pilots be aboard foreign flag or U. S. flag vessels on register on the very same waters of the U. S. Virgin Islands. It is hard to reconcile these two policy positions. Clearly, the same justification put forward by COTP San Juan to justify an increase in the experience level for a federal pilot license on these waters would support the need for foreign commerce vessels to take a pilot when entering and leaving these very ports. The obvious conflict between the position taken by Captain of the Port of San Juan in Exhibit "H" and Exhibit "L" is plain to see.

Thus, while the U. S. Coast Guard requires pilots on those U. S. vessels entering and leaving the ports of the U. S. Virgin Islands subject to the provisions Title 46, U. S. Code § 8502 and 46 CFR §15.812, extremely large foreign flag cargo vessels, container ships and cruise ships entering and leaving these same ports take a pilot only on a strictly voluntary basis. Neither COTP San Juan nor Commander, Seventh Coast Guard District have provided any support or encouragement to efforts to establish a requirement that such foreign commerce vessels take a government pilot and acquiesce to this clear dichotomy. Certainly, we have seen no correspondence and heard nothing in our meetings to suggest that they even recognize a problem.

Not only is the failure of the Captain of the Port of San Juan and Commander, Seventh Coast Guard District to support a requirement for compulsory pilots aboard foreign commerce vessels in the U. S. Virgin Islands contrary to logic and common sense, it is contrary to the previously published and well established policy of the U. S. Coast Guard.

United States Coast Guard Policy Statements on Compulsory Pilotage

It has been axiomatic since the early days of our republic, a system of compulsory state and federal pilotage is at the core of our navigational safety system. As discussed in more detail in Exhibits "A" and "B", in enacting the Ports and Waterways Safety Act of 1972, the U.S. Congress recognized the important relationship between navigational safety and compulsory pilotage. Congress empowered the Secretary to require a federally licensed pilot on self propelled vessels whenever pilots are not required by state law, the vessel is engaged in foreign commerce and is operating on the navigable waters of the United States. 46 U.S. Code §8503

Historically, the United States Coast Guard has consistently taken the position that compulsory pilotage is a necessary navigational safeguard. Accordingly, there can be no question as to whether or not the policy goals of navigational safety and the protection of the sensitive marine environment of the U.S. Virgin Islands require that foreign vessels and U.S. vessels sailing on register, in excess of 1600 gross tons, entering and leaving the ports of the U.S. Virgin Islands take a federally licensed, first class pilot.

Such a position is consistent with the previously published policy statements of the U.S. Coast Guard. For example, in a Notice of Proposed Rulemaking published on February 19, 1991, 56 Fed. Reg. 6598, the U.S. Coast Guard took note of the fact that foreign vessels and U.S. vessels sailing on register were not required by the States of Oregon and Washington to take a state licensed pilot. This meant that vessels engaged in foreign commerce, mostly foreign vessels, did not have to take a pilot when transversing U.S. navigable waters within the States of Oregon and Washington. While noting that not taking a pilot did not occur frequently due to fact that the vessels still had to pay a 2/3 pilotage fee, the Coast Guard noted that there was nothing to prevent the continued or increased practice of foreign and U. S. vessels on register operating on these waters without a pilot on board. Accordingly, as stated, "the Coast Guard believes that this is an unsafe practice and represents unacceptable risk to certain narrow, hazardous, and environmentally sensitive waters within the States of Oregon and Washington." 56 Fed. Reg. at 6598. The NPRM went on to discuss the fact that while foreign vessels and U.S. vessels sailing on register routinely took on Oregon State pilots on a voluntary rather than a mandatory basis, several such vessels had recently navigated in Oregon and Washington without a pilot. The Coast Guard NPRM then stated "[t]his is an unsafe practice and represents an unacceptable risk to human life, property, and the environment." 56 Fed. Registered at 6599.

This is precisely the situation which currently exists in the U.S. Virgin Islands. The Virgin Island Port Authority (VIPA) requires all vessels entering and leaving the ports of the U. S. Virgin islands to pay for a pilot but does not require them to actually make use of a pilot. To the contrary, VIPA has stated that the taking of a Virgin islands government pilot by large foreign cargo vessels, large foreign cruise ships and all other vessels (except those carrying explosives) is strictly on a voluntary basis. While many such vessels take a pilot, many do not, even though they are required to pay for pilot service. In fact, recently, the VIPA Marine Managers, acting at the direction of VIPA, have been actively discouraging large foreign cargo vessels and cruise ships from taking a pilot when departing USVI ports outside normal working hours.

We would submit that, as explicitly stated in the referenced Notice of Proposed Rulemaking, this is an unsafe practice and represents an unacceptable risk to human life, property, and the environment. This is especially true in light of the fact that many of these foreign cruise ships are in excess of 80,000 gross tons and carrying thousands of U. S. citizens as passengers.

We also invite your attention to the position taken by the U.S. Coast Guard in their publication of an Interim Final Rule on February 2, 1994, 59 Fed. Reg. 4839, wherein the U.S. Coast Guard took the position that they would not accept an alternative proposal because that alternative definition "...would have enabled coastwise seagoing vessels to make voyages without a pilot within the internal waters of the United States, including those waters where most hazards to navigation are encountered." 59 Fed. Reg. at 4841.

Similarly, on May 10, 1995, the U.S. Coast Guard published a Final Rule, 60 Fed. Reg. 24793, amending 46 CFR Part 15 to require federal pilots for foreign trade vessels navigating within certain offshore marine terminals located within U.S. navigable waters off the States of California and Hawaii. The Coast Guard stated that such action was necessary to ensure vessels are navigated by competent, qualified individuals, who are knowledgeable of the local area. As published in the NFRM, the Coast Guard believes the requirement for a pilot would promote navigational safety, increase the level of accountability and reduce the risk of accident and discharge of oil or other hazardous substance in these waters. 60 Fed. Register at 24793.

As justification for this Final Rule, the U.S. Coast Guard noted that this rulemaking would enhance navigational safety because it will require pilots where none were required

before, and would raise the level of accountability for pilots involved in marine accidents. The Coast Guard went on to state that:

“[t]he Coast Guard is concerned with the safe navigation of vessels but notes that there is no federal or state regulation which would require a State pilot to be aboard a foreign trade vessel making an intra-port transit. Consequently, this rulemaking will enhance navigational safety by requiring all foreign trade vessels to use a Federally licensed pilot during an intra-port transit in these waters.” 60 Fed. Reg. at 24794.

The U. S. Coast Guard has consistently taken the position that rulemaking requiring the use of a federally licensed pilot on waters where no state pilot is required to be aboard a foreign trade vessel will promote navigational safety, increase the level of accountability and reduce the risk of accidents and discharge of oil or other hazardous substances by ensuring that vessels are navigated by competent, qualified individuals, that are knowledgeable of the local area. Neither the Virgin Islands Port Authority, the Captain of the Port, San Juan nor Commander, Seventh Coast Guard District, have provided any basis, logic, reason or rationale as to why this well reasoned and well established U.S. Coast Guard policy does not apply to the navigable waters of the United States within the ports of the U.S. Virgin Islands.

The U.S. Coast Guard took a similar position in its Notice of Final Rulemaking published on October 27, 1998 at 63 Fed. Reg. 57252. In this rulemaking action, the U.S. Coast Guard issued a Final Rule requiring that vessels in foreign trade, underway on the Cape Fear River and the Northeast Cape Fear River in North Carolina, be under the direction and control of federal pilots when not under the direction and control of state pilots. The U.S. Coast Guard took the position that such a requirement was:

“... necessary to ensure that vessels are navigated by competent, qualified persons, who are familiar with the local area and accountable to either the State or the Coast Guard. This measure will promote navigational safety by increasing the level of accountability and reducing the risk of both accidents and the discharge of oil or other hazardous substances into these waters.” 56 Fed. Reg. at 57252 - 57253.

After determining that state law did not require a state pilot on such waters, the Coast Guard determined that it was unsafe for vessels to undertake intra-port transits or otherwise navigate in the water of the Cape Fear River or Northeast Cape Fear River

except under the direction and control of pilots accountable to either North Carolina or the Coast Guard. Accordingly, the U.S. Coast Guard undertook a rulemaking procedure to require federally licensed pilots on vessels in foreign trade on these waters until such time as the state having jurisdiction established a superceding requirement for a state pilot. 63 Fed. Reg. at 57253.

Most recently, the U.S. Coast Guard proposed a similar rulemaking action to require that vessels engaged in foreign trade, underway on navigable waters within the State of Maryland, be under the direction and control of federally licensed pilots when not under the direction and control of state pilots. By Notice of Proposed Rulemaking dated October 21, 1999, 64 Fed. Reg. at 56720, the U.S. Coast Guard proposed such a regulatory requirement and setting forth that such a measure would "promote navigational safety by increasing the level of accountability and reducing the risk of marine casualties in the waters of Maryland." 64 Fed. Reg. at 56720. The U.S. Coast Guard also determined it was unsafe for certain vessels to undertake intra-port transit, or otherwise navigate in the waters of the State of Maryland, except when under the direction and control of pilots accountable to the State or Coast Guard.

According to the position taken by the U.S. Coast Guard, operating such vessels with docking masters who are either not licensed as federal or state pilots or not operating under the authority of a pilots license, presented an unacceptable risk to human life, property and the environment. Accordingly, the Coast Guard determined that requiring persons to serve under the authority of a federal first class pilot license, and so to be accountable for their actions and competency, would increase marine safety. 64 Fed. Reg. at 56721.

The Coast Guard continued to take that position, reiterating the Coast Guard determination that it was unsafe for certain vessels to undertake intra-port transit or otherwise navigate in the waters of the State of Maryland except when under the direction and control of pilots accountable to the State or the Coast Guard. 65 Fed. Reg. at 6350. The Coast Guard continued to take this position until such time as the State of Maryland amended its laws to require state pilots aboard these vessels, as reflected in the Notice of Termination published July 26, 2000 at 65 Fed. Reg. 45955.

Accordingly, it has consistently been the well published, and frequently stated, position of the U.S. Coast Guard that the compulsory presence of either state or federally licensed pilots aboard foreign vessels and U.S. vessels sailing on register promotes navigational safety by increasing the level of accountability and reducing the risk of marine

casualty. It has also consistently been the well stated position of the U.S. Coast Guard that utilization of pilots aboard such foreign trade vessels on a purely voluntary basis is an unsafe practice and represents an unacceptable risk to human life, property and the marine environment. The U.S. Coast Guard has consistently and repeatedly taken the position that the interests of navigational safety and the protection of the marine environment require regulations which ensure that vessels are navigated by competent, qualified individuals, who are knowledgeable of the local area, that is, by licensed pilots.

It is the well established policy position of the U.S. Coast Guard that regulatory requirements that foreign vessels and U.S. vessels sailing on register be under the direction and control of either a state licensed or federally licensed pilot promotes navigational safety, increases the level of accountability and reduces the risk of an accident or discharge of oil or other hazardous substances on the navigable waters of the United States.

In light of the well established and frequently published policy statements on this issue by the U.S. Coast Guard, the position taken by the Virgin Islands Port Authority that there are no U. S. Virgin Islands regulations mandating the use of pilots on foreign vessels and U.S. vessels sailing on register entering and leaving the ports of the U.S. Virgin Islands, that utilization of such pilot services by these vessels is strictly on a voluntary basis, and that there is no need for such a requirement, is clearly unsupportable. There can be no question that such a policy constitutes an unsafe practice and represents an unacceptable risk to human life, property and the marine environment.

In the absence of any statutory or regulatory requirement on the part of the U.S. Virgin Islands requiring that foreign commerce vessels entering and leaving the ports of the Virgin Islands be under the direction and control of either a state or federally licensed pilot, the rulemaking action requested is necessary to ensure that vessels are navigated by competent, qualified individuals, who are knowledgeable of the local area. The rulemaking action requested by this petition will promote navigational safety, increase the level of accountability, and reduce the risk of accidents and the discharge of oil or other hazardous substances on to the waters of the U. S. Virgin Islands.

The referenced, published policy positions of the U.S. Coast Guard notwithstanding, the Affidavits and other information set forth in Exhibits "A" and "B" also demonstrate the urgent need for such a rulemaking. There has already been one major grounding involving a large, foreign flag cruise ship entering port without a pilot. Both the size and number of the foreign flag cruise ships calling at ports within the U.S. Virgin

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Islands is constantly increasing. These cruise ships now routinely exceed 80,000 tons and several ships calling at U.S. Virgin Islands ports are well in excess of 100,000 tons. These foreign cruise ships carry ten of thousands of U. S. passengers in and out of the ports of the U.S. Virgin Islands. Increasingly, problems are being encountered with close quarters meeting situations between foreign cruise ships and foreign cargo vessels, near misses between cruise ships and other difficulties arising from a lack of adequate bridge to bridge radio telephone communications. However, rather than taking action to support the utilization of federally licensed, first class pilots on these vessels, the Virgin Islands Port Authority has resisted such efforts. Moreover, the Virgin Islands Port Authority has been increasingly taking a position which not only does not require foreign cargo vessels and foreign cruise ships to take a pilot upon arrival in the ports of the U.S. Virgin Islands, but actively discourages these same vessels from taking a pilot upon departure.

Given the increasing number of close calls, near collisions, almost groundings, close quarter situations and similar incidents involving large foreign flag cruise ships with thousands of passengers, large cargo and container vessels, auto carriers and other vessels such as chemical carriers and tankers, it is only a matter of time before a major collision, grounding or oil spill results from this unsafe and dangerous situation.

The ongoing discussions, meetings and correspondence have clearly brought this situation to the attention of the U.S. Coast Guard, from the Captain Port of San Juan to the Commander, Seventh Coast Guard District. In other contexts, the Commandant has repeatedly described such a situation as an unacceptable risk to human life, property and the environment. This lack of action by the U. S. Coast Guard, therefore, is clearly at odds with the well stated and frequently published policy of the U.S. Coast Guard with regard to the importance of the presence of pilots on such vessels. Should an unfortunate marine casualty, or environmental catastrophe, result from this situation, the failure of the U.S. Coast Guard to take action will certainly appear to be a glaring deficiency when considered in the light of the Coast Guard's own frequent statements concerning the importance of such pilotage requirements in promoting navigational safety, increasing the level of accountability and reducing the risk of marine casualties.

Petition for Rule Making

The below listed members of the public, all individuals holding federal first class pilot licenses issued by the U.S. Coast Guard, appropriately endorsed for the waters of St. Thomas Harbor, or the waters of Christiansted Harbor, Fredericksted Harbor, Krause Lagoon or Limetree Bay, St. Croix, are employed by the Virgin Islands as "government

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pilot" for these waters. The background, training, experience and qualifications of these individuals give them the necessary expertise to opine on the necessity for the rulemaking action which they request. The opinions, statements and representations set forth in this letter are those of the pilots, acting in their capacity as private citizens exercising their right to petition the U.S. Government, in the free exercise of their constitutional rights. The views expressed herein do not necessarily reflect the position of the Virgin Islands Port Authority on these issues. The individuals petitioning the U.S. Coast Guard for the ruling making action set forth in this letter are:

Pilot John Amaro
Pilot Donald Jeffrey
Pilot Robert Ripley
Pilot Eric Robinson

Pilot James Clifford
Pilot Anthony Mongiello
Pilot John O'Reilly
Pilot Douglas MacKay

We further note that these individuals are also prospective members of a collective bargaining unit currently in contract negotiations with the Virgin Islands Port Authority. However, the navigational safety issues and concerns presented by this petition are entirely separate and distinct from those negotiations. Neither the legitimate concerns of these individuals as members of the public nor the undeniable conflict between the previously stated positions of the U. S. Coast Guard referenced above and the "voluntary" nature of pilotage in the U. S. Virgin Islands can be dismissed as a "labor-management dispute".

Pursuant to the provision of 33 CFR § 1.05-20(a), the above listed members of the public petition the U.S. Coast Guard to undertake a rulemaking action. As set forth above, the rulemaking action requested is a revision of the regulations set forth in Title 46, Code of Federal Regulations, Part 15, to establish a requirement that foreign vessels and U.S. vessels sailing on register be under the direction and control of a federally licensed, first class pilot while operating on the navigable waters of the United States while entering and leaving the ports of the U.S. Virgin Islands.

As discussed in more detail above, it is also the position of the petitioning members of the public that the needs of navigational safety and protection of the marine environment will be adequately met if the requirement for mandatory federally licensed first class pilots for such foreign vessels and U.S. vessels sailing on register are limited to those vessels of 1600 gross tons or more.

Inasmuch as U.S. flag, inspected vessels over 1600 gross tons not sailing on register are already required by the provisions of the U.S. Law to be under the direction and control of an individual qualified to serve as a federally licensed first class pilot, such a rulemaking action will ensure that all vessels, foreign and U.S. flag, over 1600 gross tons, entering and leaving the ports of the U.S. Virgin Islands are under the direction and control of competent, qualified persons, knowledgeable in the local area and accountable to either the Virgin Islands Port Authority or the U.S. Coast Guard. Such a rulemaking action will promote navigational safety by increasing the level of accountability and reducing the risk of marine casualties in the waters of the U.S. Virgin Islands.

Failure of the U.S. Coast Guard to initiate the rulemaking action requested will result in the U.S. Coast Guard continuing to allow large foreign cargo vessels and cruise ships entering and leaving the ports of the U.S. Virgin Islands to employ pilots on a voluntary rather than mandatory basis. The U.S. Coast Guard has already taken the position in similar situations that this is an unsafe practice and represents an unreasonable risk to human life, property and the environment. Accordingly, the rulemaking action petition herein is necessary to safeguard the environmentally sensitive waters of the U.S. Virgin Islands, reduce the risk of collisions and groundings and reduce the risk of environmental harm. The rulemaking action requested will promote navigational safety by increasing the level of accountability, reducing the risk of vessel accidents and reducing the risk of discharge of oil or other hazardous substances into the waters of the U.S. Virgin Islands. In light of the fact that this petition for rulemaking action is in complete accord with the numerous, previously published policy positions of the U.S. Coast Guard with regard to this issue, there does not appear to be any rational basis for not proceeding with the rule making action requested on an expedited basis.

The Proposed Rulemaking Action

The provisions of 46 CFR, Part 15, Subpart I, should be revised to add a new section to be governed by the provisions of 46 CFR § 15.1001 as follows:

§15.10XX U. S. Virgin islands

The following U. S. navigable waters located within the U. S. Virgin Islands:

- (a) *St. Thomas Harbor, U.S.V.I.* The waters of St. Thomas Harbor within the boundaries of a line beginning at a point of land located on Point Knoll, at latitude 18°-19'-10" North, longitude 64°-55'-23" West; thence southeast to St.

Thomas Harbor Channel Lighted Entrance Buoy "2", located in approximate position latitude 18°-18'-35" North, longitude 64°-55'-04" West; thence westward to St. Thomas Harbor Channel Lighted Buoy "WR1", in approximate position latitude 18°-18'-38" North, longitude 64°-56'-04" West; thence westward to a point of land located on Flamingo Point, Water Island, at latitude 18°-18'-22" North, longitude 64°-57'-26" West; thence westward to Porpoise Rocks Lighted Buoy "2", in approximate position latitude 18°-18'-23" North, longitude 64°-58'-34" West; thence westward to a point located at 18°-18'-28" North, longitude 64°-59'-01" West; thence north to a point located at latitude 18°-19'-27" North, longitude 64°-59'-01" West; thence southeast to Red Point Buoy "3", located in approximate position latitude 18°-19'-15" North, longitude 64°-58'-18" West, thence east, northeast to a point of land located on Mosquito Point, at latitude 18°-19'-30" North, longitude 64°-57'-53" West; thence back along the shoreline of St. Thomas Harbor to the beginning point.


- (b) *Christiansted Harbor, St. Croix U.S.V.I.* The waters of Christiansted Harbor, St. Croix, on the landward side of a line beginning at a point of land on Shoy Point at latitude 17°-45'-37" North, longitude 64°-40'-56" West; thence northwesterly to Christiansted Harbor Lighted Entrance Buoy Number "1", in approximate position latitude 17°-45'-47" North, longitude 64°-41'-46" West; thence southwesterly to the Christiansted Harbor Entrance Channel Lighted Beacon Number "10", south of Barracuda Ground, in approximate position 17°-45'-26" North, longitude 64°-42'-01 West; thence westward to a point located at latitude 17°-45'-45" North, longitude 64°-43'-32" West; thence to the stack at Little Princess as charted on NOAA Chart 25645 in approximate position, latitude 17°-45'-24" North, longitude 64°-43'-29" West.
- (c) *Frederiksted Harbor, St. Croix, U.S.V.I.* The waters of Frederiksted Harbor, St. Croix, on the landward side of a line drawn from a point of land located in the vicinity of the "Old Mill" as charted near Sprat Hall on NOAA Chart 25644 in approximate position latitude 17°-44'-23" North, longitude 64°-53'-23" West; thence along a line drawn to a point of land located on Sandy Point at position latitude 17°-40'-47" North, longitude 64°-54'-16 West.
- (d) *Krause Lagoon and Limetree Bay, St. Croix, U.S.V.I.* The waters of Krause Lagoon and Limetree Bay, St. Croix, on the landward side of a line drawn beginning at a point of land at latitude 17°-41'-18" North, longitude 64°-44'-53" West; thence southeasterly to a point of land on Ruth Island at position latitude

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17°-41'-18" North, longitude 64°-44'53" West; thence southeasterly to Krause Lagoon Channel Lighted Entrance Buoy Number "1", in approximate position latitude 17°-40'-35" North, longitude 64°-45'-13" West; thence easterly to Limetree Bay Channel Lighted Entrance Buoy Number "1" in approximate position latitude 17°-40'-33" North, longitude 64°-44'-14" West; thence easterly to Limetree Bay Channel Lighted Entrance Buoy Number "2" in approximate position latitude 17°-40'-34" North, longitude 64°-44'-06" West; thence northwesterly to a point of land located in position in position latitude 17°-41'-20" North, longitude 64°-44'-23" West.

Please do not hesitate to contact us if you have any questions or wish to discuss anything in more detailed. I look forward to hearing from you at your earliest convenience with regard to your decision whether or not to initiate the rule making action requested.

Very truly yours,

KELLER & HOUCK, P.A.


Andrew W. Anderson

cc: CCGD7(m)
CCGD7(dl)
COTP San Juan
Pilot E. Robinson, STT
Pilot J. Clifford STC

PETITION FOR RULE MAKING

June 12, 2001

KELLER & HOUCK

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Reply to: Miami Office

March 3, 2000

RADM T.W. Allen USCG
Commander, Seventh Coast Guard District
Brickell Plaza Federal Building
909 Southeast First Avenue
Miami, Florida 33131

Re: Request for Establishment of Regulated Navigation Area (RNA) Pursuant to 33 CFR § 165.5(b) Requiring Certain Vessels to be under the Direction and Control of a Licensed, First Class Pilot on the Waters of St. Thomas Harbor, U. S. Virgin Islands

Dear Admiral Allen,

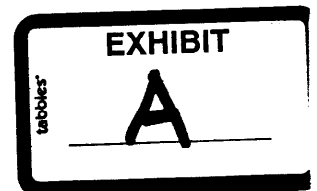
On behalf of the individuals identified below, application is hereby made, pursuant to the provisions of 33 CFR § 165.5(b) and 33 CFR Part 165, Subpart B, for the establishment of a regulated navigation area (RNA) on the designated waters of St. Thomas Harbor, U. S. Virgin Islands within which certain vessels would be required to be under the direction and control of a pilot licensed pursuant to the provisions of 46 U.S.C. § 7101.

As provided in 33 CFR § 165.5(b), "any person" may request that a regulated navigation area be established.

The following information is submitted pursuant to the requirements of 33 CFR § 165.5(b):

(1) The name(s) of the person(s) submitting the request;

Pilot John Amaro
Pilot Donald Jeffrey
Pilot Robert Ripley
Pilot Eric Robinson



These individuals all hold Federal first class pilot's licenses issued by the U.S. Coast Guard, appropriately endorsed for the waters of St. Thomas Harbor, and are employed by the Virgin Islands Port Authority as "government pilot" for these waters. The background, training, experience and qualifications of these individuals are set out in more detail in their attached Affidavits in Support of Application. The opinions and statements

set forth in this letter and attached affidavits are those of the pilots in their capacities as private citizens exercising their right to communicate and petition to the U.S. Government and do not necessarily reflect the views or positions of the Virgin Islands Port Authority on these issues.

(2) The location and boundaries of the regulated navigation area:

The regulated navigation area (RNA) proposed encompasses the waters of St. Thomas Harbor within the boundaries of a line beginning at a point of land located on Point Knoll, at latitude 18°-19'-10" North, longitude 64°-55'-23" West; thence southeast to St. Thomas Harbor Channel Lighted Entrance Buoy "2", located in approximate position latitude 18°-18'-35" North, longitude 64°-55'-04" West; thence westward to St. Thomas Harbor Channel Lighted Buoy "WR1", in approximate position latitude 18°-18'-38" North, longitude 64°-56'-04" West; thence westward to a point of land located on Flamingo Point, Water Island, at latitude 18°-18'-22" North, longitude 64°-57'-26" West; thence westward to Porpoise Rocks Lighted Buoy "2", in approximate position latitude 18°-18'-23" North, longitude 64°-58'-34" West; thence westward to a point located at 18°-18'-28" North, longitude 64°-59'-01" West; thence north to a point located at latitude 18°-19'-27" North, longitude 64°-59'-01" West; thence southeast to Red Point Buoy "3", located in approximate position latitude 18°-19'-15" North, longitude 64°-58'-18" West, thence east, northeast to a point of land located on Mosquito Point, at latitude 18°-19'-30" North, longitude 64°-57'-53" West; thence back along the shoreline of St. Thomas Harbor to the beginning point.

(3) The date, time, and duration that the regulated navigation area should be established:

The regulated navigation area should be established as soon as possible as a Temporary Limited Access Area (LAA) pursuant to Volume 6, Chapter 1, Section J, U. S. Coast Guard Marine Safety Manual on an emergency basis by publication in the Federal Register and Broadcast Notice to Mariners until such time as a permanent regulated navigation area can be established pursuant to rulemaking under the Administrative Procedure Act. The regulated navigation area would remain in effect until such time as the Government of the Virgin Islands establishes a requirement mandating that the classes of vessels described be under the direction and control of a licensed pilot in order to enter, depart or operate on the waters of St. Thomas Harbor.

(4) A description of the activities planned for the regulated navigation area:

As set out in more detail below, certain vessels would be required to be under the direction and control of a pilot with an appropriately endorsed Federal first class pilot's license issued by the U. S. Coast Guard in order to enter, depart or operate on the waters of the regulated navigation area.

In addition, as set out in more detail below, all vessels required to be under the direction and control of a pilot would be required to have a radiotelephone installation as prescribed by 33 CFR part 26, to maintain a listening watch, to have a person on the bridge immediately available to communicate in the English language and to make verbal passing arrangements with other vessels in addition to the sound signal requirement of the 72 COLREGS.

(5) The nature of the restrictions or conditions desired:

As discussed in more detail below, the following classes of vessels would be required to be under the direction and control of a pilot with an appropriately endorsed Federal first class pilot's license, licensed under 46 U.S.C. § 7101, in order to enter, depart or operate on the waters of the regulated navigation area:

- (a) All vessels required by the provisions of 46 U.S.C. § 8502 and 46 CFR § 15.812 to be under the direction and control of an individual holding a valid Federal first class pilot's license issued by the U. S. Coast Guard.
- (b) All vessels required to give notice of their arrival and departure pursuant to the provisions of 46 CFR §§ 160.211, 160.313 to the Captain of the Port.
- (c) All vessels required by 46 CFR § 160.215 to give notice of a hazardous condition.
- (d) All self-propelled vessels engaged in foreign commerce, except public vessels of the United States and foreign public vessels, but including all other foreign vessels and U.S. Flag vessels sailing on register, of more than 1600 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title.

All of the vessels to which the restrictions of the regulated navigation area would be applicable would also be required to be equipped with an installation or multiple installations of VHF-FM radios as prescribed by 33 CFR part 26, to maintain a continuous listening watch on the designated calling channel, VHF-FM 13, to separately monitor the International Distress and Calling Channel, VHF-FM 16, and, when necessary, transmit and confirm, on the designated frequency, in the English language, the intentions of the vessel and any other information necessary for the safe navigation of vessels.

(6) The reason why the regulated navigation area is necessary:

As set out and described in more detail below, and in the accompanying Affidavits, the Virgin Islands Port Authority by its own regulations, as well as in practice,

does not require all vessels arriving, departing or operating on the waters of St. Thomas pilot to have on board or be under the direction and control of a pilot.

As a result a number of vessels, many quite large, arrive and/or depart St. Thomas without a pilot on board. This has not resulted, as yet, in any major disasters involving loss of life or serious damage to the environment. There have been, however, a number of near misses and it is only a matter of time until there is a major incident involving serious injury, loss of life and/or a significant threat of damage to the environment.

It is clear that the requirements of navigational safety and protection of the marine environment, as well as the clearly enunciated public policy of the United States as declared by Congress, require that vessels of the type specified herein be under the direction and control of a properly qualified and licensed pilot when transiting such confined and environmentally sensitive waters.

The U.S. Coast Guard has recognized the threat to the environment and to navigational safety posed by vessels of more than 1600 gross tons by imposing on such vessels special navigational safety regulations in Part 164 of Title 33, Code of Federal Regulations. Typically, such vessels are also required by either by state or federal law to be under the direction and control of a pilot. However, for a variety of reasons, the situation in the U.S. Virgin Islands is such that extremely large vessels arrive and depart without having a pilot onboard. Whether a vessel takes a pilot is, more often than not, left to the discretion of the master. It can not be rationally argued, given the clearly enunciated Congressional policy pronouncements underlying the Ports and Waterways Safety Act and the Navigational Safety Regulations, that such vessels should not be required to be under the direction and control of a pilot when transiting the waters of St. Thomas Harbor.

The U.S. Coast Guard can not allow this situation to continue. The Coast Guard must act quickly to establish the proposed regulated navigation area as soon as possible as a Temporary Limited Access Area by Broadcast Notice to Mariners, immediate publication in the Federal Register and by actual notice to those cruises lines and shipping companies whose vessels call in St. Thomas on a regularly scheduled basis. Prompt action should then be taken to publish a Notice of Proposed Rulemaking in the Federal Register to initiate the process for establishing permanent regulated navigation area regulations in accordance with the rulemaking procedures mandated by the Administrative Procedures Act.

Legislative History of Pilotage Regulations

That a vessel arriving or departing a port should have on board an individual familiar with the currents, shoals, navigational aids and other characteristics of the port has been a fundamental concept of navigational safety from time immemorial. It can not be questioned that a system of compulsory pilotage has been part of maritime safety

legislation and regulation from the earliest days of the Republic. See, e.g., Act of August 7, 1789, ch. 9, § 4, 1 Stat. 53, 54.

Historically, the United States has evolved a system under which pilotage for specified foreign vessels and U.S. vessels engaged in foreign commerce sailing on register is regulated exclusively by the States while certain coastwise U.S. vessels were regulated exclusively by Federal regulation. See, e.g., 46 U.S.C. §§ 8501, 8502, see also generally, Ray v. Atlantic Richfield, Co., 435 U.S. 151, 150-160 (1978); Ex parte McNiel, 80 U.S. (13 Wall.) 236, 239 (1871), Cooley V. Board of Wardens, 53 U.S. (12 How.) 299, 314-315 (1852)

In 1972, Congress enacted the Ports and Waterways Safety Act of 1972, P. L. 92-340, to increase navigation and vessel safety, to protect the marine environment and to protect life, property and structures in, on or immediately adjacent to the navigable waters of the United States. The Act specifically provided the Secretary with regulatory authority to, *inter alia*, control vessel movement, establish requirements for vessel operation and other related port safety controls. Included as Section 101(5) of the Act was authority on the part of the "Secretary of the department in which the Coast Guard is operating" to:

"require pilots on self-propelled vessels engaged in foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved"

IN 1978, Congress passed the Port and Tanker Safety Act of 1978, P. L. 95-474, which amended the Ports and Waterways Safety Act to provide the Coast Guard with broader, more extensive and more explicit statutory authority and addressed improvements in the supervision and control over vessels of all types, foreign and domestic, operating on the navigable waters of the United States, including specific provisions addressing improvements in vessel manning and pilotage.

Section 7 of the Port and Tanker Safety Act amended Section 101(5) of the Ports and Waterways Safety Act to provide:

The Secretary may require federally licensed pilots on any self-propelled vessel, foreign or domestic, engaged in foreign trade, when operating on the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Any such requirement shall be terminated when the State having jurisdiction over the area involved establishes a requirement for a State licensed pilot and has so notified the Secretary.

As used in the Act, and elsewhere in relevant legislation, the term "State" was defined to include the U.S. Virgin Islands. See, e.g., 33 U.S.C. § 1222(3), 46 U.S.C. 2101(36).

Clearly, Congress attached great significance to pilotage as a means of protecting the marine environment and increasing vessel and navigational safety by giving the Secretary the power to require pilotage if the State having jurisdiction did not.

The Secretary delegated to the Commandant of the Coast Guard the authority to carry out the functions of the Coast Guard relating to the safety of property and life at sea as well as his authority under the Port and Tanker Safety Act of 1978, including, *inter alia*, his authority under Section 7 of the Act, except to the extent that section pertains to the operations of the Saint Lawrence Seaway. 49 CFR §§ 1.46(b), 1.46(n)(4).

Pursuant to those delegations of authority, the Commandant has re-organized the regulations concerning regulated navigation areas and limited access areas 46 CFR Part 165 (47 Fed. Reg. 29659, July 8, 1982) and clarified the delegation to Coast Guard District Commanders of the rulemaking authority to establish regulated navigation areas (48 Fed. Reg. 35407, Aug. 4, 1983). The Commandant has also delegated to the District Commanders final authority, within their districts, for the functions of the Coast Guard relating to safeguarding navigation of the navigable waters of the United States. 33 CFR §1.01-1. In delegating to the District Commanders the authority to control vessel traffic through the establishment of regulated navigation areas, Subpart B, 33 CFR § 165.11, the Notice of Final Rulemaking made specific reference to the delegation of authority from the Secretary to the Commandant in 49 CFR § 1.46(n)(4). 48 Fed. Reg. 35408, August 4, 1983.

In Section 29(f)(3)(A) of the Coast Guard Authorization Act of 1984, P.L. 98-557, Congress amended Chapter 85 of Title 46, U.S. Code, to add § 8503 which was virtually identical to Section 7 of the Port and Tanker Safety Act of 1978 while simultaneously repealing the latter. The Legislative History of the revision does not discuss the amendment in any detail other than to state that "With the exception of the provisions highlighted below, (the amendment is not highlighted) the bill proposes only administrative or technical changes to the status quo. Senate report 98-454, 1984 U.S. Code, Cong. & Adm. News 4831, 4835 (1984).

It is clear, therefore, that in enacting 46 U.S.C. § 8503 and repealing Section 7 of the Port and Tanker Safety Act of 1978, Congress saw the revision only as a technical change re-locating the provision and regulatory authority of the Secretary from Title 33 of the U.S. Code to Title 46 with other provisions regarding pilotage. Accordingly, the technical revision would have no impact on the delegation of authority from the Secretary to the Commandant or from the Commandant to the District Commanders.

The Coast Guard implicitly recognized the validity of this interpretation when, pursuant to the prior delegation of authority by the Secretary, it promulgated regulations under 46 U.S.C. § 8503 requiring certain self-propelled vessels engaged in foreign commerce to use a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard when operating on certain navigable waters of the United States on which there was no State requirement for a pilot. 46 CFR Part 15, Subpart I, 60 Fed. Reg. 24796, May 10, 1995

Thus, it is clear that among the vessel operating conditions which may be established by the District Commander as part of a regulated navigation area is a requirement that certain vessels may be required to be under the direction and control of a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard. The use of a regulated navigation area, rather than a manning regulation, COTP order, or security zone is particularly appropriate to establish such a requirement when many of the vessels affected are foreign vessels not subject to U.S. manning regulations, the regulations apply to many vessels and the duration of the requirement is more than temporary.

Background of U.S. Virgin Islands Pilotage

Due to the exemption of the Virgin Islands from U. S. coastwise laws, the Coast Guard has long recognized that pilotage in the Virgin Islands presents "...a legal anomaly which does not arise anywhere else in the law of pilotage." See, e.g., Wood v. Amerada Hess Corp. 845 F. Supp. 130, 136-140 (S.D.N.Y. 1994), see also, NVIC 8-94.

The United States Coast Pilot, Volume 5, Atlantic Coast: Gulf of Mexico, Puerto Rico and Virgin Islands, Chapter 14, provides in Paragraph (16) that vessels of and above 100 gross tons and those vessels carrying explosives and dangerous cargo must engage for the services of an Insular Government pilot in order to enter, leave or shift berths in a U.S. Virgin Islands port.

However, the Virgin Islands Code does not explicitly require vessels to actually take a pilot but merely establishes fees for vessels that do take a pilot. 25 V.I.Code § 171

The Tariff published by the Virgin Islands Port Authority, Rule 34.2, does not require vessels to take a pilot but merely provides that every vessel shall pay pilotage fees and that payment is mandatory whether the service is used or not.

The Virgin Islands Marine Rules and Regulations Title 25, Chapter 7, Section 131-12 provides:

Vessels of and above 100 gross registered tons, must engage or **pay for** the services of a government pilot in order to enter, leave, or shift berth in the harbor; provided, that public vessels duly commissioned by the

United States or foreign governments, and all other vessels exempted in each case by the Government of the Virgin Islands, shall not be subject to the foregoing requirements:....Vessels under 100 gross tons will not actually be required to take a pilot, but vessels under 100 gross tons may be required to take a pilot at the discretion of the harbor authorities. All vessels of any nationality or tonnage shall be required to take a pilot when the vessel has on board dangerous or explosive cargo. (emphasis added)

Official VIPA statistics establish that over 900 cruise ships carrying more than 1.5 million passengers call at St. Thomas every year. In addition, more than 2500 other vessels of more than 100 gross tons transship more than 750,000 tons of cargo. A number of these cruise ships range in size from 80,000 tons upward of 100,000 tons. Many of the cargo vessels which call in St. Thomas are more than 6000 gross tons.

While most cruise ships opt to take a pilot when arriving, many depart, often at night, without a pilot on board. About 75% of cargo vessels take a pilot on arrival and about half take a pilot when departing. Some large cargo vessels never take a pilot at all, however.

The provisions of the Virgin Islands Code, Port Tariff and Marine Rules and Regulations are, at best, ambiguous as to whether vessels are compelled to actually take a pilot or merely compelled to pay for pilotage and may decide for themselves whether to actually take a pilot. In practice, the Virgin Islands Port Authority uses the latter interpretation as its pilotage policy. Large foreign flag and U.S. vessels are frequently allowed to make their own decisions with regard to the circumstances under which they will take a pilot and, in some cases, allowed to use unregulated pilots.

Unlike Puerto Rico and other coastal States, the U. S. Virgin Islands do not license pilots, do not have a pilotage commission and have no regulations, statutes, policies or guidelines governing the competence and qualifications of pilots. While, in fact, all "government" pilots are licensed Federal, First Class pilots, this requirement is one of policy rather than law or regulation, except as set forth in 46 U.S. Code § 8502 and 46 CFR § 15.812. Whether large foreign flag and U. S. vessels in foreign commerce entering and leaving harbor should be under the direction and control of a pilot, as well as the license, experience and training requirements to act as such a pilot, should not be subject to conjecture, interpretation or discretion. Policy on such issues should be clear, unambiguous and mandatory.

However, there is no clear regulatory plan governing pilotage in the U. S. Virgin Islands. There are no clear, unambiguous requirements as to when vessels are required to have a pilot on board. Neither are there any clear standards as to the requirements for licensing, competence, training or experience for those individuals who function either as government pilots or private pilots. Neither are there any regulations requiring the monitoring of bridge to bridge radiotelephone frequencies.

The well documented fact that large U.S. and foreign vessels are entering and leaving ports in St. Croix and St. Thomas without a pilot with the knowledge of the Virgin Islands Port Authority establishes beyond dispute that the Virgin Islands Port Authority interprets to the Virgin Islands Code, Port Tariff and applicable marine regulations in a manner that these vessels are not required to take a pilot.

As a result, cruise ships of 80,000 to more than 100,000 tons depart the port in darkness without a pilot as cargo vessels of 6000 to 8000 tons stand in to port, also without a pilot on board. Since there are no pilots on board, and no regulations requiring the monitoring of bridge to bridge radiotelephone frequencies, the vessels are often unable to communicate with each other.

There have been several near disasters as a result of this situation. In January 1998, the M/V REGAL PRINCESS went aground in St Thomas Harbor near Point Knoll when the master proceeded into the harbor before a pilot was on the bridge. Fortunately, the vessel was re-floated without significant damage, injury or environmental impact. At least two cargo vessels have experienced similar groundings without a pilot on board.

In December 1999, the 108,000 ton GRAND PRINCESS was outbound, in darkness, without a pilot on board while the 14,745 ton CLUB MED was inbound without a pilot. As a result of a number of factors, including the latter vessel proceeding into harbor without a pilot, a close quarters situation developed requiring both vessels to maneuver to avoid collision and passing about 50 yards apart.

A requirement that all vessels be under the control of a pilot would also allow for a more systematic and orderly control of vessel traffic. Vessels departing and arriving without a pilot get underway and stand into harbor without regard to other scheduled inbound and outbound traffic and frequently without monitoring either VHF-FM Channels 13 or 16. The result is often chaos and a series of close quarters situations.

Thus far, it has been a combination of luck and good maneuvering *in extremis* that has prevented a major disaster. However, the potential for a serious collision or grounding with resultant injury, loss of life, damage to the environment and severe economic impact on St. Thomas through oil spillage or port closure is present on a daily basis. The U.S. Coast Guard, therefore, should act promptly to address this situation. Should a serious collision or grounding occur resulting in significant environmental damage, it would be clear that the mandate of Congress with regard to marine environmental protection and navigational safety had been violated.

The concerns of the Applicants have been pointed out to the Virgin Islands Port Authority. The Applicants have asked the Virgin Islands Port Authority for information as to how they propose to address these issues but have not received a timely response.

The U. S. Coast Guard Captain of the Port of San Juan, Commander Servidio, has expressed a desire to meet and discuss these issues with the pilots but the Virgin Islands Port Authority has stated that it will not allow the pilots to participate in such meetings with the U. S. Coast Guard. Accordingly, Applicants have no alternative but to request the U.S. Coast Guard to take action. Further, inasmuch as this application also provides information to the Coast Guard concerning possible violations of Title 46, U. S. Code, and the regulations issued thereunder, the pilots invoke the protection of 46 U.S.C. § 2114 and similar provisions of Federal law.

Accordingly, the Applicants urge the U.S. Coast Guard to take immediate action to establish the regulated navigation area on an emergency basis and to initiate immediate rulemaking to establish permanent regulations. The Applicants would welcome the opportunity to meet with the District Commander or his representative to discuss this proposal and their concern that the present situation poses a grave, immediate threat to the marine environment and the safety of navigation.

In the interim, please do not hesitate to contact us if you have any questions or wish to discuss these matters in more detail. We look forward to hearing from you at your earliest convenience.

Very truly yours,

Keller & Houck, P.A.

A handwritten signature in black ink, appearing to read 'Andrew W. Anderson', with a stylized, flowing script.

Andrew W. Anderson

Cc: CAPT W.H. Fels CCGD7(m)
CAPT J. F. Ahern CCGD7(dl)
CDR J.A. Servidio COTP San Juan

In Re: The Application of
Pilot W. Donald Jeffrey
For the Establishment of
A Regulated Navigation Area
In St. Thomas Harbor

Affidavit of W. Donald Jeffrey in Support of Application

BEFORE ME, the undersigned authority, personally appeared the Affiant, WILLIAM DONALD JEFFREY, who, after having been duly sworn, deposes and states:

1. My name is WILLIAM DONALD JEFFREY. I am over 21 years of age. I am fully competent to make this Affidavit, and I have personal knowledge of the facts stated herein. To the best of my knowledge, all of the facts stated in this Affidavit are true and correct.
2. I am a 1965 graduate of the Maine Maritime Academy. From 1965 to 1971, I served as deck watch officer on the Liner CONSTITUTION and on various American Export Isbrandtsen Lines containerships. From 1971 to 1973, I served as tug master, mate and docking master for the Boston Tow Boat Corp. in Boston Harbor. From 1973 to 1989, I was employed by the Massachusetts Port Authority as Master of the Fireboat "HOWARD W. FITZPATRICK" and served in various management positions in Public Safety and Aviation. While working for the Massachusetts Port Authority, I also developed their waterborne related rescue and liaison plans, developed and taught the curriculum for a national Maritime Fire Response program and taught maritime fire fighting in the State College system. I currently hold both U.S. and ^{an expired} ~~Liberian~~ Master's licenses.
3. I have been employed by the Virgin Islands Port Authority as a Government Pilot for the Port of St. Thomas since 1991. I have been licensed by the U.S. Coast Guard as a First Class Pilot for St. Thomas since 1991. Since being licensed, I have piloted more than 3,850 vessels of various sizes and types in and out of St. Thomas without incident.
4. It is not unusual when I am onboard an outbound cruise ship that I encounter either an outbound cruise ship without a pilot or a large inbound cargo vessel without a pilot. Quite often, we experience difficulty raising these vessels on VHF-FM Channel 13 or 16 and they often do not make a Security Call or respond to a Security Call made by a pilot. This often results in a close aboard meeting situation around a blind corner at Banana Point in East Gregorie Channel and/or last minute maneuvering to avoid a collision. In the morning, the reverse situation is often

encountered with inbound cruise ships with a pilot onboard meeting large, outbound cargo vessels without a pilot. This often results in unanticipated crossing situations

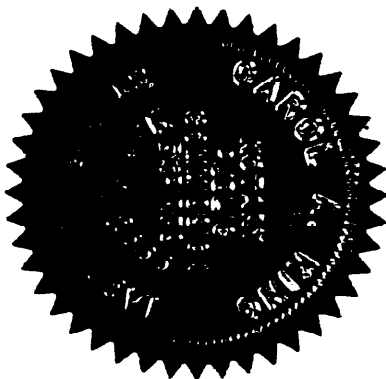
5. Vessels departing without a pilot often attempt to leave harbor out of order with resultant chaos. The pilots try to bring large vessels into harbor one at a time with the arrival time tied to the departure time so that the first ship in has the latest departure time and vice versa. The intent is to eliminate vessels having to maneuver around other vessels still moored, which can be a tight maneuver, especially at night. Vessels departing without a pilot, out of order, cause havoc, often turn much too early and end up too far east of the range on departure. This sometimes results in damage to yachts in the small boat anchorage.
6. The Virgin Islands Port Authority does not have a clear and unambiguous interpretation of its pilotage requirements. Cruise ships that are bound for Port Authority facilities at Crown Bay Pier North, Crown Bay Pier South and Homeport are required to have a pilot onboard for arrival and departure while cruise ships bound for the West Indian Company facility are only required to have a pilot inbound. Cargo vessels, often in excess of 5000 gross tons, bound for the sandfill, waterfront, Crowley and Tropical berths are not required to take a pilot inbound or outbound at all.
7. The Virgin Islands Port Authority interprets the provisions of the Virgin Islands Code, the Port Tariff and the Marine Rules and Regulations in a manner that makes the taking of a pilot by many large cargo and cruise ships optional with the master. The rules emphasize collecting pilotage fees rather than navigational safety.
8. Based on the foregoing, together with my training and experience, it is my opinion that the situation in St. Thomas poses an imminent threat to the marine environment, an imminent threat to the safety of the passengers and vessels calling at St. Thomas and creates a daily risk of a serious grounding, collision or other major marine casualty.
9. Accordingly, pursuant to the provisions of 33 CFR § 165.5(b), as set forth in the letter to which this Affidavit is attached, I make application to the Commander, Seventh Coast Guard District for the establishment of a regulated navigation area on the specified waters of St. Thomas Harbor requiring certain vessels to be under the direction and control of a licensed, First Class Pilot. Having examined the size and type of vessels calling in St. Thomas, and taking into account the policy considerations underlying the Navigation Safety Regulations, I recommend that, in addition to the other classes of vessels identified, all U.S. and foreign vessels of more than 1600 gross tons be required to be under the direction and control of a licensed first class pilot.

FURTHER, AFFIANT SAYETH NAUGHT.

William Donald Jeffrey
WILLIAM DONALD JEFFREY

SWORN TO and SUBSCRIBED before me, the undersigned authority, by
WILLIAM DONALD JEFFREY, who is personally known to me, this 1st day
of March, 2000.

Notary Public Carol A. King
Print name of Notary:
Carol A. King
My Commission expires: May 11, 2000
Commission Number: NP 7096



In Re: The Application of
Pilot Robert A. Ripley
For the Establishment of
A Regulated Navigation Area
In St. Thomas Harbor

Affidavit of Robert A. Ripley in Support of Application

BEFORE ME, the undersigned authority, personally appeared the Affiant, ROBERT A. RIPLEY, who, after having been duly sworn, deposes and states:

1. My name is ROBERT A. RIPLEY. I am over 21 years of age. I am fully competent to make this Affidavit, and I have personal knowledge of the facts stated herein. To the best of my knowledge, all of the facts stated in this Affidavit are true and correct.
2. I am a 1992 graduate of the Massachusetts Maritime Academy. I have been employed by the Virgin Islands Port Authority as a Government Pilot for the Port of St. Thomas since 1994. I have been licensed by the U.S. Coast Guard as a First Class Pilot for St. Thomas since 1994. Since being licensed, I have piloted thousands of vessels of various sizes and types in and out of St. Thomas without incident.
3. It is not unusual when I am onboard an outbound cruise ship that I encounter either an outbound cruise ship without a pilot or a large inbound cargo vessel without a pilot. Quite often, we experience difficulty raising these vessels on VHF-FM Channel 13 or 16 and they often do not make a Security Call or respond to a Security Call made by a pilot. This often results in a close aboard meeting situation around a blind corner at Banana Point in East Gregorie Channel and/or last minute maneuvering to avoid a collision. In the morning, the reverse situation is often encountered with inbound cruise ships with a pilot onboard meeting large, outbound cargo vessels without a pilot. This often results in unanticipated crossing situations. Without mandatory bridge to bridge communications or pilotage, it is often difficult to communicate with such vessels.
4. Vessels departing without a pilot often attempt to leave harbor out of order with resultant chaos. The pilots try to bring large vessels into harbor one at a time with the arrival time tied to the departure time so that the first ship in has the latest departure time and vice versa. The intent is to eliminate vessels having to maneuver around other vessels still moored, which can be a tight maneuver, especially at night. Vessels departing without a pilot, out of order, cause havoc, often turn much too early and end up too far east of the range on departure. This sometimes results in damage to yachts in the small boat anchorage.

5. The Virgin Islands Port Authority does not have a clear and unambiguous interpretation of its pilotage requirements. Cruise ships that are bound for Port Authority facilities at Crown Bay Pier North, Crown Bay Pier South and Homeport are required to have a pilot onboard for arrival and departure while cruise ships bound for the West Indian Company facility are only required to have a pilot inbound. Cargo vessels, which are often quite large, in excess of 5000 gross tons, bound for the sandfill, waterfront, Crowley and Tropical berths are not required to take a pilot inbound or outbound at all.
6. The Virgin Islands Port Authority interprets the provisions of the Virgin Islands Code, the Port Tariff and the Marine Rules and Regulations in a manner that makes the taking of a pilot by many large cargo and cruise ships optional with the master. The rules emphasize paying of pilotage fees rather than on having a pilot on board for navigational safety.
7. Based on the foregoing, together with my training and experience, it is my opinion that the pilotage situation in St. Thomas poses an imminent threat to the marine environment, an imminent threat to the safety of the passengers and vessels calling at St. Thomas and creates a daily risk of a serious grounding, collision or other major marine casualty.
8. Accordingly, pursuant to the provisions of 33 CFR § 165.5(b), as set forth in the letter to which this Affidavit is attached, I make application to the Commander, Seventh Coast Guard District for the establishment of a regulated navigation area on the specified waters of St. Thomas Harbor requiring certain vessels to be under the direction and control of a licensed, First Class Pilot. Having examined the size and type of vessels calling in St. Thomas, and taking into account the policy considerations underlying the Navigation Safety Regulations, I recommend that, in addition to the other classes of vessels identified, all U.S. and foreign vessels of more than 1600 gross tons be required to be under the direction and control of a licensed first class pilot.

FURTHER, AFFIANT SAYETH NAUGHT.

Robert A. Ripley
ROBERT A. RIPLEY

SWORN TO and SUBSCRIBED before me, the undersigned authority, by
ROBERT A. RIPLEY, who is personally known to me, this 1st day
of March, 2000.

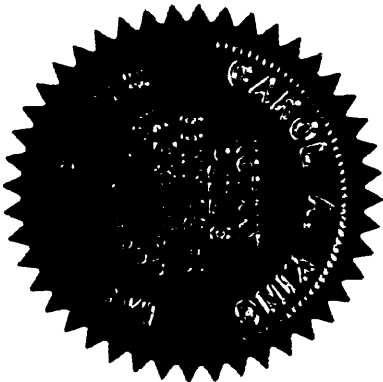
Notary Public Carol A. King

Print name of Notary:

Carol A. King

My Commission expires: May 11, 2000

Commission Number: NP7096



In Re: The Application of
Pilot Eric C. Robinson
For the Establishment of
A Regulated Navigation Area
In St. Thomas Harbor

Affidavit of Eric C. Robinson in Support of Application

BEFORE ME, the undersigned authority, personally appeared the Affiant, ERIC C. ROBINSON, who, after having been duly sworn, deposes and states:


1. My name is ERIC C. ROBINSON. I am over 21 years of age. I am fully competent to make this Affidavit, and I have personal knowledge of the facts stated herein. To the best of my knowledge, all of the facts stated in this Affidavit are true and correct.
2. I am a 1992 graduate of the Massachusetts Maritime Academy. I have been employed by the Virgin Islands Port Authority as a Government Pilot for the Port of St. Thomas since 1993. I have been licensed by the U.S. Coast Guard as a First Class Pilot for St. Thomas since 1993. Since being licensed, I have piloted approximately 3,300 vessels of various sizes and types in and out of St. Thomas without incident.
3. I have reviewed the official records of the Virgin Islands Port Authority and determined that, in Fiscal Year 1998, some 927 cruise ships with more than 1,561,020 passengers called at St. Thomas. In January 2000, the records indicate there were 116 cruise ships calls at St. Thomas. The records establish all these cruise ships took a pilot on arrival but only 54% took a pilot on departure. Of the 116 cruise ships calling at St. Thomas in January 2000, the records establish that 38 were from 4253 to 50,000 gross tons, 70 vessels were from 50,001 to 80,000 gross tons and 8 vessels were from 80,001 to 109,000 gross tons. Thus, some very large ships departed St. Thomas without a pilot.
4. The vast majority of cargo traffic into St. Thomas flows through Crown Bay. In Fiscal Year 1998, the records of the Virgin Islands Port Authority indicate 2,675 cargo vessels of more than 100 gross tons moved through Crown Bay. The records indicate that many of these vessels are quite large (e.g., TROPIC PRIDE, 6536 gross tons, TROPIC QUEST, 7947 gross tons, TROPIC SUN, 6536 gross tons, SEA CLOUD, and SEA GALE, 8633 gross tons, etc.). The TROPIC vessels rarely take a pilot inbound or outbound while the SEA CLOUD and SEA GALE usually take a pilot inbound but not on departure. Generally speaking, the VIPA records indicate that only 75% of cargo vessels of 1600 gross tons or more take a pilot on arrival and only about 50% of these vessels take a pilot on departure.

5. I am aware of at least three vessels, one cruise ship and two cargo vessels, which have gone aground in St. Thomas Harbor without a pilot.
6. It is not unusual when I am onboard an outbound cruise ship that I encounter either an outbound cruise ship without a pilot or a large inbound cargo vessel without a pilot. Quite often, we experience difficulty raising these vessels on VHF-FM Channel 13 or 16 and they often do not make a Security Call or respond to a Security Call made by a pilot. This often results in a close aboard meeting situation around a blind corner at Banana Point in East Gregorie Channel and/or last minute maneuvering to avoid a collision. In the morning, the reverse situation is often encountered with inbound cruise ships with a pilot onboard meeting large, outbound cargo vessels without a pilot. This often results in unanticipated crossing situations. Without mandatory bridge to bridge communications or pilotage, it is often difficult to communicate with such vessels.
7. Vessels departing without a pilot often attempt to leave harbor out of order with resultant chaos. The pilots try to bring large vessels into harbor one at a time with the arrival time tied to the departure time so that the first ship in has the latest departure time and vice versa. The intent is to eliminate vessels having to maneuver around other vessels still moored, which can be a tight maneuver, especially at night. Vessels departing without a pilot, out of order, cause havoc, often turn much too early and end up too far east of the range on departure. This sometimes results in damage to yachts in the small boat anchorage.
8. The Virgin Islands Port Authority does not have a clear and unambiguous interpretation of its pilotage requirements. Cruise ships that are bound for Port Authority facilities at Crown Bay Pier North, Crown Bay Pier South and Homeport are required to have a pilot onboard for arrival and departure while cruise ships bound for the West Indian Company facility are only required to have a pilot inbound. Cargo vessels, which are often quite large, in excess of 5000 gross tons, bound for the sandfill, waterfront, Crowley and Tropical berths are not required to take a pilot inbound or outbound at all.
9. The Virgin Islands Port Authority interprets the provisions of the Virgin Islands Code, the Port Tariff and the Marine Rules and Regulations in a manner that makes the taking of a pilot by many large cargo and cruise ships optional with the master. The rules emphasize paying of pilotage fees rather than on having a pilot on board for navigational safety.
10. Based on the foregoing, together with my training and experience, it is my opinion that the pilotage situation in St. Thomas poses an imminent threat to the marine environment, an imminent threat to the safety of the passengers and vessels calling

at St. Thomas and creates a daily risk of a serious grounding, collision or other major marine casualty.

11. Accordingly, pursuant to the provisions of 33 CFR § 165.5(b), as set forth in the letter to which this Affidavit is attached, I make application to the Commander, Seventh Coast Guard District for the establishment of a regulated navigation area on the specified waters of St. Thomas Harbor requiring certain vessels to be under the direction and control of a licensed, First Class Pilot. Having examined the size and type of vessels calling in St. Thomas, and taking into account the policy considerations underlying the Navigation Safety Regulations, I recommend that, in addition to the other classes of vessels identified, all U.S. and foreign vessels of more than 1600 gross tons be required to be under the direction and control of a licensed first class pilot.

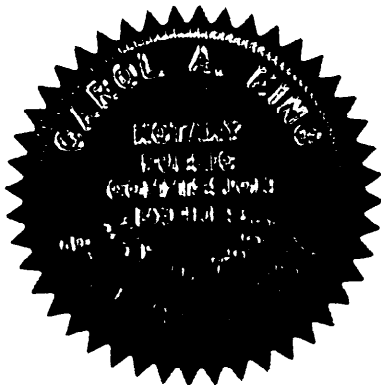
FURTHER, AFFIANT SAYETH NAUGHT.



ERIC C. ROBINSON

SWORN TO and SUBSCRIBED before me, the undersigned authority, by ERIC C. ROBINSON, who is personally known to me, this 1st day of March, 2000.

Notary Public Carol A. King
Print name of Notary:
Carol A King
My Commission expires: May 11, 2000
Commission Number: NP 7046



In Re: The Application of
Pilot John D. Amaro
For the Establishment of
A Regulated Navigation Area
In St. Thomas Harbor

Affidavit of John D. Amaro in Support of Application

BEFORE ME, the undersigned authority, personally appeared the Affiant, JOHN DEREK AMARO, who, after having been duly sworn, deposes and states:

1. My name is JOHN DEREK AMARO. I am over 21 years of age. I am fully competent to make this Affidavit, and I have personal knowledge of the facts stated herein. To the best of my knowledge, all of the facts stated in this Affidavit are true and correct.
2. I am a 1993 graduate of the Maine Maritime Academy. I have been employed by the Virgin Islands Port Authority since 1989. I have been employed by the Port Authority as a Government Pilot for the Port of St. Thomas since 1994. I have been licensed by the U.S. Coast Guard as a First Class Pilot for St. Thomas since 1994. Since being licensed, I have piloted thousands of vessels of various sizes and types in and out of St. Thomas without incident.
3. It is not unusual when I am onboard an outbound cruise ship that I encounter either an outbound cruise ship without a pilot or a large inbound cargo vessel without a pilot. Quite often, we experience difficulty raising these vessels on VHF-FM Channel 13 or 16 and they often do not make a Security Call or respond to a Security Call made by a pilot. This often results in a close aboard meeting situation around a blind corner at Banana Point in East Gregorie Channel and/or last minute maneuvering to avoid a collision. In the morning, the reverse situation is often encountered with inbound cruise ships with a pilot onboard meeting large, outbound cargo vessels without a pilot. This often results in unanticipated crossing situations and an inability to communicate with the other vessel concerning the situation.
4. Vessels departing without a pilot often attempt to leave harbor out of order with resultant chaos. The pilots try to bring large vessels into harbor one at a time with the arrival time tied to the departure time so that the first ship in has the latest departure time and vice versa. The intent is to eliminate vessels having to maneuver around other vessels still moored, which can be a tight maneuver, especially at night. Vessels departing without a pilot, out of order, cause havoc, often turn much

too early and end up too far east of the range on departure. This sometimes results in damage to yachts in the small boat anchorage.

5. The Virgin Islands Port Authority does not have a clear and unambiguous interpretation of its pilotage requirements. Cruise ships that are bound for Port Authority facilities at Crown Bay Pier North, Crown Bay Pier South and Homeport are required to have a pilot onboard for arrival and departure while cruise ships bound for the West Indian Company facility are only required to have a pilot inbound. Cargo vessels, in excess of 5000 gross tons, bound for the sandfill, waterfront, Crowley and Tropical berths are not required to take a pilot inbound or outbound at all.
6. The Virgin Islands Port Authority interprets the provisions of the Virgin Islands Code, the Port Tariff and the Marine Rules and Regulations in a manner that makes the taking of a pilot by many large cargo and cruise ships optional with the master. The rules emphasize collecting pilotage fees rather than navigational safety.
7. Based on the foregoing, together with my training and experience, it is my opinion that the situation in St. Thomas poses an imminent threat to the marine environment, an imminent threat to the safety of the passengers and vessels calling at St. Thomas and creates a daily risk of a serious grounding, collision or other major marine casualty.
8. Accordingly, pursuant to the provisions of 33 CFR § 165.5(b), as set forth in the letter to which this Affidavit is attached, I make application to the Commander, Seventh Coast Guard District for the establishment of a regulated navigation area on the specified waters of St. Thomas Harbor requiring certain vessels to be under the direction and control of a licensed, First Class Pilot. Having examined the size and type of vessels calling in St. Thomas, and taking into account the policy considerations underlying the Navigation Safety Regulations, I recommend that, in addition to the other classes of vessels identified, all U.S. and foreign vessels of more than 1600 gross tons be required to be under the direction and control of a licensed first class pilot.

FURTHER, AFFIANT SAYETH NAUGHT.


JOHN DEREK AMARO

SWORN TO and SUBSCRIBED before me, the undersigned authority, by JOHN DEREK AMARO, who is personally known to me, this 24th day of February, 2000.

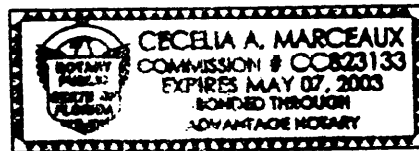
Notary Public Cecelia Marceaux

Print name of Notary:

CECELIA MARCEAUX

My Commission expires: 5/07/03

Commission Number: CC823133



KELLER & HOUCK

A PROFESSIONAL ASSOCIATION

ANDREW W. ANDERSON
ERIN E. DARDIS
DAVID N. GAMBACH
ALEC J. HARALAMBIDES
JERRY D. HAMILTON
EDWIN E. HIGHTOWER, JR.
MARK R. HOUCK
JOSEPH W. JANSSEN
JOHN W. KELLER, III
JENNIFER A. KERR

FARRIS J. MARTIN, III
WALTER J. MATHEWS
JOHN M. MITCHELL
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PORT CANAVERAL OFFICE
101 GEORGE KING BOULEVARD
PORT CANAVERAL, FL 32920
TELEPHONE (407) 799-9299
TELEFAX (407) 799-1966

Reply to: Miami Office

March 3, 2000

RADM T.W. Allen USCG
Commander, Seventh Coast Guard District
Brickell Plaza Federal Building
909 Southeast First Avenue
Miami, Florida 33131

Re: Request for Establishment of Regulated Navigation Area (RNA) Pursuant to 33 CFR § 165.5(b) Requiring Certain Vessels to be under the Direction and Control of a Licensed, First Class Pilot on the Waters of Frederiksted Harbor, Christiansted Harbor, Krause Lagoon and Limetree Bay, St. Croix, U. S. Virgin Islands

Dear Admiral Allen,

On behalf of the individuals identified below, application is hereby made, pursuant to the provisions of 33 CFR § 165.5(b) and 33 CFR Part 165, Subpart B, for the establishment of a regulated navigation area (RNA) on the designated waters of Frederiksted Harbor, Christiansted Harbor, Krause Lagoon and Limetree Bay, St. Croix, U. S. Virgin Islands within which certain vessels would be required to be under the direction and control of a pilot licensed pursuant to the provisions of 46 U.S.C. § 7101.

As provided in 33 CFR § 165.5(b), "any person" may request that a regulated navigation area be established.

The following information is submitted pursuant to the requirements of 33 CFR § 165.5(b):

(1) The name(s) of the person(s) submitting the request;

Pilot James Clifford
Pilot Anthony Mongiello
Pilot John O'Reilly
Pilot Douglas Mackay



These individuals all hold Federal first class pilot's licenses issued by the U.S. Coast Guard, appropriately endorsed for the waters of Christiansted Harbor, Frederiksted Harbor, Krause Lagoon and Limetree Bay, St. Croix, and are employed by the Virgin Islands Port Authority as "government pilot" for these waters. The background, training,

experience and qualifications of these individuals give them the necessary expertise to opine on the necessity for such regulations. The opinions and statements set forth in this letter are those of the pilots in their capacities as private citizens exercising their right to communicate and petition to the U. S. Government and do not necessarily reflect the views or positions of the Virgin Islands Port Authority on these issues.

(2) The location and boundaries of the regulated navigation area:

(a) Christiansted Harbor, St. Croix

The regulated navigation area encompasses the waters of Christiansted Harbor, St. Croix, on the landward side of a line beginning at a point of land on Shoy Point at latitude 17°-45'-37" North, longitude 64°-40'-56" West; thence northwesterly to Christiansted Harbor Lighted Entrance Buoy Number "1", in approximate position latitude 17°-45'-47" North, longitude 64°-41'-46" West; thence southwesterly to the Christiansted Harbor Entrance Channel Lighted Beacon Number "10", south of Barracuda Ground, in approximate position 17°-45'-26" North, longitude 64°-42'-01 West; thence westward to a point located at latitude 17°-45'-45" North, longitude 64°-43'-32" West; thence to the stack at Little Princess as charted on NOAA Chart 25645 in approximate position, latitude 17°-45'-24" North, longitude 64°-43'-29" West.

(b) Frederiksted Harbor, St. Croix

The regulated navigation area encompasses the waters of Frederiksted Harbor, St. Croix, on the landward side of a line drawn from a point of land located in the vicinity of the "Old Mill" as charted near Sprat Hall on NOAA Chart 25644 in approximate position latitude 17°-44'-23" North, longitude 64°-53'-23" West; thence along a line drawn to a point of land located on Sandy Point at position latitude 17°-40'-47" North, longitude 64°-54'-16 West.

(c) Krause Lagoon and Limetree Bay, St. Croix

The regulated navigation area encompasses the waters of Krause Lagoon and Limetree Bay, St. Croix, on the landward side of a line drawn beginning at a point of land at latitude 17°-41'-18" North, longitude 64°-44'-53" West; thence southeasterly to a point of land on Ruth Island at position latitude 17°-41'-18" North, longitude 64°-44'-53" West; thence southeasterly to Krause Lagoon Channel Lighted Entrance Buoy Number "1", in approximate position latitude 17°-40'-35" North, longitude 64°-45'-13" West; thence easterly to Limetree Bay Channel Lighted Entrance Buoy Number "1" in approximate position latitude 17°-40'-33" North, longitude 64°-44'-14" West; thence easterly to Limetree Bay Channel Lighted Entrance Buoy Number "2" in approximate position latitude 17°-40'-34" North, longitude 64°-44'-06" West; thence northwesterly to a point of land located in position in position latitude 17°-41'-20" North, longitude 64°-44'-23" West.

(3) The date, time, and duration that the regulated navigation area should be established:

The regulated navigation area should be established as soon as possible as a Temporary Limited Access Area (LAA) pursuant to Volume 6, Chapter 1, Section J, U. S. Coast Guard Marine Safety Manual on an emergency basis by publication in the Federal Register and Broadcast Notice to Mariners until such time as a permanent regulated navigation area can be established pursuant to rulemaking under the Administrative Procedure Act. The regulated navigation area would remain in effect until such time as the Government of the Virgin Islands establishes a requirement mandating that the classes of vessels described be under the direction and control of a licensed pilot in order to enter, depart or operate on the designated waters of Christiansted Harbor, Frederiksted Harbor, Krause Lagoon and Limetree Bay, St. Croix.

(4) A description of the activities planned for the regulated navigation area:

As set out in more detail below, certain vessels would be required to be under the direction and control of a pilot with an appropriately endorsed Federal first class pilot's license issued by the U. S. Coast Guard in order to enter, depart or operate on the waters of the regulated navigation area.

In addition, as set out in more detail below, all vessels required to be under the direction and control of a pilot would be required to have a radiotelephone installation as prescribed by 33 CFR part 26, to maintain a listening watch, to have a person on the bridge immediately available to communicate in the English language and to make verbal passing arrangements with other vessels in addition to the sound signal requirement of the 72 COLREGS.

(5) The nature of the restrictions or conditions desired:

As discussed in more detail below, the following classes of vessels would be required to be under the direction and control of a pilot with an appropriately endorsed Federal first class pilot's license, licensed under 46 U.S.C. § 7101, in order to enter, depart or operate on the waters of the regulated navigation area:

- (a) All vessels required by the provisions of 46 U.S.C. § 8502 and 46 CFR § 15.812 to be under the direction and control of an individual holding a valid Federal first class pilot's license issued by the U. S. Coast Guard.
- (b) All vessels required to give notice of their arrival and departure pursuant to the provisions of 46 CFR §§ 160.211, 160.313 to the Captain of the Port.
- (c) All vessels required by 46 CFR § 160.215 to give notice of a hazardous condition.

- (d) All self-propelled vessels engaged in foreign commerce, except public vessels of the United States and foreign public vessels, but including all other foreign vessels and U.S. Flag vessels sailing on register, of more than 1600 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title.

All of the vessels to which the restrictions of the regulated navigation area would be applicable would also be required to be equipped with an installation or multiple installations of VHF-FM radios as prescribed by 33 CFR part 26, to maintain a continuous listening watch on the designated calling channel, VHF-FM 13, to separately monitor the International Distress and Calling Channel, VHF-FM 16, and, when necessary, transmit and confirm, on the designated frequency, in the English language, the intentions of the vessel and any other information necessary for the safe navigation of vessels.

(6) The reason why the regulated navigation area is necessary:

As set out and described in more detail below, and in the accompanying Affidavits, the Virgin Islands Port Authority by its own regulations, as well as in practice, does not require all vessels arriving, departing or operating on the waters of Christiansted Harbor, Frederiksted Harbor, Krause Lagoon and Limetree Bay, St. Croix, to have on board or be under the direction and control of a pilot. While most vessels arriving take a pilot, they are under no compulsion to do so. Indeed, many large, foreign flag vessels do not take a government pilot but take a pilot whose background, training, competence and qualification are not regulated by the Government of the U.S. Virgin Islands.

As a result a number of vessels, many quite large, depart St. Croix without a pilot on board. This has not resulted, as yet, in any major disasters involving loss of life or serious damage to the environment. There have been, however, a number of near misses and it is only a matter of time until there is a major incident involving serious injury, loss of life and/or a significant threat of damage to the environment.

It is clear that the requirements of navigational safety and protection of the marine environment, as well as the clearly enunciated public policy of the United States as declared by Congress, require that vessels of the types specified herein be under the direction and control of a properly qualified and licensed pilot when transiting such confined and environmentally sensitive waters. Christiansted Harbor Entrance Channel, for example, transits a living coral reef.

The U.S. Coast Guard has recognized the threat to the environment and to navigational safety posed by vessels of more than 1600 gross tons by imposing on such vessels special navigational safety regulations in Part 164 of Title 33, Code of Federal Regulations. Typically, such vessels are also required by either by state or federal law to be under the direction and control of a pilot. However, for a variety of reasons, the situation in the U.S. Virgin Islands is such that extremely large vessels sometimes arrive

and depart without having a pilot onboard. Whether a vessel takes a pilot is, more often than not, left to the discretion of the master. It can not be rationally argued, given the clearly enunciated Congressional policy pronouncements underlying the Ports and Waterways Safety Act and the Navigational Safety Regulations, that such vessels should not be required to be under the direction and control of a pilot when transiting the waters of Christiansted Harbor, Frederiksted Harbor, Krause Lagoon and Limetree Bay, St. Croix.

The U.S. Coast Guard can not allow this situation to continue. The Coast Guard must act quickly to establish the proposed regulated navigation area as soon as possible as a Temporary Limited Access Area by Broadcast Notice to Mariners, immediate publication in the Federal Register and by actual notice to those cruises lines and shipping companies whose vessels call at St. Croix on a regularly scheduled basis. Prompt action should then be taken to publish a Notice of Proposed Rulemaking in the Federal Register to initiate the process for establishing permanent regulated navigation area regulations in accordance with the rulemaking procedures mandated by the Administrative Procedures Act.

Legislative History of Pilotage Regulations

That a vessel arriving or departing a port should have on board an individual familiar with the currents, shoals, navigational aids and other characteristics of the port has been a fundamental concept of navigational safety from time immemorial. It can not be questioned that a system of compulsory pilotage has been part of U.S. maritime safety legislation and regulation from the earliest days of the Republic. See, e.g., Act of August 7, 1789, ch. 9, § 4, 1 Stat. 53, 54.

Historically, the United States has evolved a system under which pilotage for specified foreign vessels and U.S. vessels engaged in foreign commerce sailing on register is regulated exclusively by the States while certain coastwise U.S. vessels were regulated exclusively by Federal regulation. See, e.g., 46 U.S.C. §§ 8501, 8502, *see also generally*, Ray v. Atlantic Richfield, Co., 435 U.S. 151, 150-160 (1978); Ex parte McNiel, 80 U.S. (13 Wall.) 236, 239 (1871), Cooley V. Board of Wardens, 53 U.S. (12 How.) 299, 314-315 (1852). As a result, throughout the rest of the United States, vessels of the type addressed by the regulated navigation area are under a compulsory pilotage requirement to be under the direction and control of a pilot licensed either by the State or the U. S. Coast Guard.

In 1972, Congress enacted the Ports and Waterways Safety Act of 1972, P. L. 92-340, to increase navigation and vessel safety, to protect the marine environment and to protect life, property and structures in, on or immediately adjacent to the navigable waters of the United States. The Act specifically provided the Secretary with regulatory authority to, *inter alia*, control vessel movement, establish requirements for vessel operation and other related port safety controls. Included as Section 101(5) of the Act was authority on the part of the "Secretary of the department in which the Coast Guard is operating" to:

“require pilots on self-propelled vessels engaged in foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved”

IN 1978, Congress passed the Port and Tanker Safety Act of 1978, P. L. 95-474, which amended the Ports and Waterways Safety Act to provide the Coast Guard with broader, more extensive and more explicit statutory authority and addressed improvements in the supervision and control over vessels of all types, foreign and domestic, operating on the navigable waters of the United States, including specific provisions addressing improvements in vessel manning and pilotage.

Section 7 of the Port and Tanker Safety Act amended Section 101(5) of the Ports and Waterways Safety Act to provide:

The Secretary may require federally licensed pilots on any self-propelled vessel, foreign or domestic, engaged in foreign trade, when operating on the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Any such requirement shall be terminated when the State having jurisdiction over the area involved establishes a requirement for a State licensed pilot and has so notified the Secretary.

As used in the Act, and elsewhere in relevant legislation, the term “State” was defined to include the U.S. Virgin Islands. See, e.g., 33 U.S.C. § 1222(3), 46 U.S.C. 2101(36).

Clearly, Congress attached great significance to pilotage as a means of protecting the marine environment and increasing vessel and navigational safety by giving the Secretary the power to require pilotage if the State having jurisdiction did not.

The Secretary delegated to the Commandant of the Coast Guard the authority to carry out the functions of the Coast Guard relating to the safety of property and life at sea as well as his authority under the Port and Tanker Safety Act of 1978, including, *inter alia*, his authority under Section 7 of the Act, except to the extent that section pertains to the operations of the Saint Lawrence Seaway. 49 CFR §§ 1.46(b), 1.46(n)(4).

Pursuant to those delegations of authority, the Commandant has re-organized the regulations concerning regulated navigation areas and limited access areas 46 CFR Part 165 (47 Fed. Reg. 29659, July 8, 1982) and clarified the delegation to Coast Guard District Commanders of the rulemaking authority to establish regulated navigation areas (48 Fed. Reg. 35407, Aug. 4, 1983). The Commandant has also delegated to the District Commanders final authority, within their districts, for the functions of the Coast Guard relating to safeguarding navigation of the navigable waters of the United States. 33 CFR

§1.01-1. In delegating to the District Commanders the authority to control vessel traffic through the establishment of regulated navigation areas, Subpart B, 33 CFR § 165.11, the Notice of Final Rulemaking made specific reference to the delegation of authority from the Secretary to the Commandant in 49 CFR § 1.46(n)(4), 48 Fed. Reg. 35408, August 4, 1983.

In Section 29(f)(3)(A) of the Coast Guard Authorization Act of 1984, P.L. 98-557, Congress amended Chapter 85 of Title 46, U.S. Code, to add § 8503 which was virtually identical to Section 7 of the Port and Tanker Safety Act of 1978, while simultaneously repealing the latter. The Legislative History of the revision does not discuss the amendment in any detail other than to state that "With the exception of the provisions highlighted below, (the amendment is not highlighted) the bill proposes only administrative or technical changes to the status quo. Senate report 98-454, 1984 U.S. Code, Cong. & Adm. News 4831, 4835 (1984).

It is clear, therefore, that in enacting 46 U.S.C. § 8503 and repealing Section 7 of the Port and Tanker Safety Act of 1978, Congress saw the revision only as a technical change re-locating the provision and regulatory authority of the Secretary from Title 33 of the U.S. Code to Title 46, placing it with other provisions regarding pilotage. Accordingly, the technical revision would have no impact on the delegation of authority from the Secretary to the Commandant or from the Commandant to the District Commanders.

The Coast Guard implicitly recognized the validity of this interpretation when, in 1995, pursuant to the prior delegation of authority by the Secretary, it promulgated regulations under 46 U.S.C. § 8503 requiring certain self-propelled vessels engaged in foreign commerce to use a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard when operating on certain navigable waters of the United States on which there was no State requirement for a pilot. 46 CFR Part 15, Subpart I, 60 Fed. Reg. 24796, May 10, 1995

Thus, it is clear that among the vessel operating conditions which may be established by the District Commander as part of a regulated navigation area is a requirement that certain vessels may be required to be under the direction and control of a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard. The use of a regulated navigation area, rather than a manning regulation, COTP order, or security zone is particularly appropriate to establish such a requirement when many of the vessels affected are foreign vessels not subject to U.S. manning regulations, the regulations apply to many vessels and the duration of the requirement is more than temporary.

Background of U.S. Virgin Islands Pilotage

Due to the exemption of the Virgin Islands from U. S. coastwise laws, the Coast Guard has long recognized that pilotage in the Virgin Islands presents "...a legal anomaly

which does not arise anywhere else in the law of pilotage." See, e.g., Wood v. Amerada Hess Corp. 845 F. Supp. 130, 136-140 (S.D.N.Y. 1994), see also, NVIC 8-94.

The United States Coast Pilot, Volume 5, Atlantic Coast: Gulf of Mexico, Puerto Rico and Virgin Islands, Chapter 14, provides in Paragraph (16) that vessels of and above 100 gross tons and those vessels carrying explosives and dangerous cargo must engage for the services of an Insular Government pilot in order to enter, leave or shift berths in a U.S. Virgin Islands port.

However, the Virgin Islands Code does not explicitly require vessels to actually take a pilot but merely establishes fees for vessels that do take a pilot. 25 V.I.Code § 171

The Tariff published by the Virgin Islands Port Authority, Rule 34.2, does not require vessels to take a pilot but merely provides that every vessel shall pay pilotage fees and that payment is mandatory whether the service is used or not. However, for the waters of Krause Lagoon and Limetree Bay, the Tariff states: "Pilot service to vessels inbound and outbound, to or from, the Martin Marietta Plant or Hess Oil Refinery shall be furnished pilot services by other than Port Authority Pilots." The Tariff does not establish any guidelines, minimum requirements or qualifications for such pilots.

As a result, very large foreign flag vessels are arriving and departing from the Amerada Hess Oil Refinery and St Croix Aluminum Plant with private pilots who are not regulated by the Port Authority. While it presently appears that all of these pilots are properly licensed, competent and experienced, there is, in reality, no requirement that they must meet any minimum qualifications whatsoever. Moreover, other large, foreign flag vessels bound to and from the container port rather than the oil refinery or aluminum plant and, thus, not covered by the exemption contained in the Tariff, are utilizing the services of these unregulated private pilots rather than government pilots.

The Virgin Islands Marine Rules and Regulations Title 25, Chapter 7, Section 131-12 provides:

Vessels of and above 100 gross registered tons, must engage **or pay for** the services of a government pilot in order to enter, leave, or shift berth in the harbor; provided, that public vessels duly commissioned by the United States or foreign governments, and all other vessels exempted in each case by the Government of the Virgin Islands, shall not be subject to the foregoing requirements:....Vessels under 100 gross tons will not actually be required to take a pilot, but vessels under 100 gross tons may be required to take a pilot at the discretion of the harbor authorities. All vessels of any nationality or tonnage shall be required to take a pilot when the vessel has on board dangerous or explosive cargo. (emphasis added)

Official VIPA statistics establish that hundreds of cruise ships carrying hundreds of thousands of passengers call at St. Croix every year. In addition, nearly 2000 other vessels of more than 100 gross tons transship more than 150,000 tons of cargo. A

number of these cruise ships range in size from 50,000 tons upward to 80,000 tons. Many of the cargo vessels, which call in St. Croix, are more than 6000 gross tons.

While virtually all cruise ships opt to take a pilot when arriving, many depart, often at night, from Frederiksted without a pilot on board. Most cargo vessels also take a pilot on arrival and take a pilot when departing St Croix. However, some of the largest cargo vessels never take a government pilot at all, utilizing only unregulated private pilots.

The provisions of the Virgin Islands Code, Port Tariff and Marine Rules and Regulations are, at best, ambiguous as to whether vessels are compelled to actually take a pilot or merely compelled to pay for pilotage and may decide for themselves whether to actually take a pilot. In practice, the Virgin Islands Port Authority uses the latter interpretation as its pilotage policy. Large foreign flag and U. S. vessels are frequently allowed to make their own decisions with regard to the circumstances under which they will take a pilot and, in some cases, allowed to use unregulated pilots.

Unlike Puerto Rico and other coastal States, the U.S. Virgin Islands do not license pilots, do not have a pilotage commission and have no regulations, statutes, policies or guidelines governing the competence and qualifications of pilots. While, in fact, all "government" pilots are licensed Federal, First Class pilots, this requirement is one of policy rather than law or regulation, except as set forth in 46 U.S. Code § 8502 and 46 CFR § 15.812. Whether large foreign flag and U. S. vessels in foreign commerce entering and leaving harbor should be under the direction and control of a pilot, as well as the license, experience and training requirements to act as such a pilot, should not be subject to conjecture, interpretation or discretion. Policy on such issues should be clear, unambiguous and mandatory.

However, there is no clear regulatory plan governing pilotage in the U. S. Virgin Islands. There are no clear, unambiguous requirements as to when vessels are required to have a pilot on board. Neither are there any clear standards as to the requirements for licensing, competence, training or experience for those individuals who function either as government pilots or private pilots. Neither are there any regulations requiring the monitoring of bridge to bridge radiotelephone frequencies.

The well documented fact that large U.S. and foreign vessels are entering and leaving ports in St. Croix and St. Thomas without a pilot with the knowledge of the Virgin Islands Port Authority establishes beyond dispute that the Virgin Islands Port Authority interprets to the Virgin Islands Code, Port Tariff and applicable marine regulations in a manner that these vessels are not required to take a pilot.

The concerns of the Applicants have been pointed out to the Virgin Islands Port Authority. The Applicants have asked the Virgin Islands Port Authority for information as to how they propose to address these issues but have not received a timely response. The U. S. Coast Guard Captain of the Port of San Juan, Commander Servidio, has expressed a desire to meet and discuss these issues with the pilots but the Virgin Islands Port Authority has stated that it will not allow the pilots to participate in such meetings with

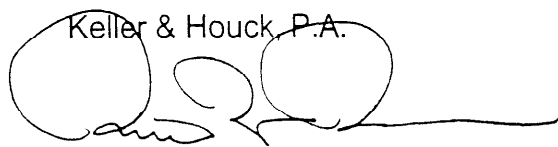
the U. S. Coast Guard. Accordingly, Applicants have no alternative but to request the U.S. Coast Guard to take action. Further, inasmuch as this application also provides information to the Coast Guard concerning possible violations of Title 46, U. S. Code, and the regulations issued thereunder, the pilots invoke the protection of 46 U.S. C. § 2114 and similar provisions of Federal law.

Thus far, it has been a combination of luck and good maneuvering that has prevented a major disaster. However, the potential for a serious collision or grounding with resultant injury, loss of life, damage to the environment and severe economic impact on St. Croix through oil spillage or port closure is present on a daily basis. The U.S. Coast Guard, therefore, should act promptly to address this situation. Should a serious collision or grounding occur resulting in significant environmental damage, it would be clear that the mandate of Congress with regard to marine environmental protection and navigational safety had been violated.

Accordingly, the Applicants urge the U.S. Coast Guard to take immediate action to establish the regulated navigation area on an emergency basis and to initiate immediate rulemaking to establish permanent regulations. The Applicants would welcome the opportunity to meet with the District Commander or his representative to discuss this proposal and their concern that the present situation poses a grave, immediate threat to the marine environment and the safety of navigation.

In the interim, please do not hesitate to contact us if you have any questions or wish to discuss these matters in more detail. We look forward to hearing from you at your earliest convenience.

Very truly yours,

Keller & Houck, P.A.


Andrew W. Anderson


Endorsement of Application by St. Croix Pilots

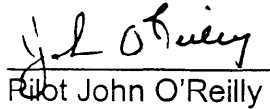
Pursuant to the provisions of 33 CFR § 165.5(b), as set forth in the letter to which this Endorsement is affixed, we, the undersigned pilots, make application to the Commander, Seventh Coast Guard District for the establishment of a regulated navigation area on the specified waters of St. Croix requiring certain vessels to be under the direction and control of a licensed, First Class Pilot. Having examined the size and type of vessels calling in St. Croix, and taking into account the policy considerations

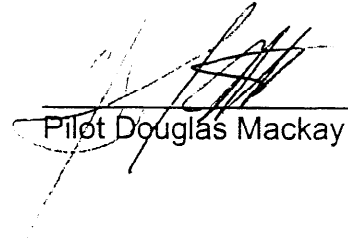
KELLER & HOUCK, P.A.

underlying the Navigation Safety Regulations, we recommend that, in addition to the other classes of vessels identified, all U.S. and foreign vessels of more than 1600 gross tons be required to be under the direction and control of a licensed first class pilot.


Pilot James Clifford


Pilot Anthony Mongiello


Pilot John O'Reilly


Pilot Douglas Mackay

Cc: CAPT W.H. Fels USCG CCGD7(m)
CAPT J. F. Ahern USCG CCGD7(dI)
CDR J.A. Servidio USCG COTP San Juan

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventh Coast Guard District

COPY

909 S.E. First Avenue
Miami, FL 33131-3050
Staff Symbol: mc
Phone: 305-415-6860
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JUN 29 2000

5800

June 26, 2000

Mr. Andrew Anderson
Keller & Houck, PA
200 South Biscayne Blvd. Suite 3460
Miami, FL 33131-5308

Dear Mr. Anderson:

This responds to your letters to Admiral Allen, dated March 3, 2000, requesting establishment of regulated navigation areas (RNA) in St. Thomas and St. Croix to require mandatory federal pilotage. On April 17, 2000, Captain Ahern provided an interim response and indicated that temporary emergency regulations were not necessary. I have reviewed your request and have determined that a public rulemaking in the form of a permanent RNA is not warranted nor an appropriate mechanism to address your concerns.

I have based my decision on input from Marine Safety Office (MSO) San Juan and the Virgin Islands Port Authority. MSO San Juan, the Virgin Islands Port Authority and local pilots are currently working together to address local pilotage issues, including safety, training and standards. A meeting was recently held in St. Croix and a harbor-safety committee formed for this purpose. A similar effort is planned for St. Thomas. It is important that local jurisdictions continue to maintain oversight of local pilotage issues. Therefore, rather than impose mandatory federal regulations, MSO San Juan will continue to assist the Virgin Islands Port Authority in developing appropriate standards and regulations.

If you have any further questions, please contact Lieutenant Commander Kirk of my staff or myself at the above phone number.

Sincerely,

WILLIAM H. FELS
Captain, U.S. Coast Guard
Chief, Marine Safety Division
Seventh Coast Guard District
By direction of the District Commander

Copy: Coast Guard Marine Safety Office San Juan
Seventh Coast Guard District Legal Office



KELLER & HOUCK

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Reply to: Miami Office

July 19, 2000

VIA TELEFAX

William H. Fels
Captain, U.S. Coast Guard
Chief, Marine Safety Division
Seventh Coast Guard District
Brickell Plaza Federal Building
909 Southeast First Avenue
Miami, Florida 33131-3060

Re: Re-consideration and/or Clarification concerning Request for Establishment of Regulated Navigation Area (RNA) Pursuant to 33 CFR § 165.5(b) Requiring Certain Vessels to be under the Direction and Control of a Licensed, First Class Pilot on the Waters of Frederiksted Harbor, Christiansted Harbor, Krause Lagoon and Limetree Bay, St. Croix, U. S. Virgin Islands

Dear Captain Fels:

Thank you for your letter 5800 dated June 26, 2000 responding to our letters to Admiral Allen requesting a establishment of Regulated Navigation Areas in St. Thomas and St. Croix.. We are also in receipt of Commander Servidio's letter 5800 dated June 19, 2000 on the same subject.

Both your letter and the letter from COTP San Juan opine that a public rule making in the form of a permanent Regulated Navigation Areas is neither warranted nor an appropriate mechanism to address the concerns raised in our letters. To a very large extent, both your decision and that reached by Commander Servidio are based on the encouraging preliminary meetings which have been held in St. Croix and St. Thomas toward the establishment of a Harbor Safety Committee. We note, however, that while initial responses to these efforts may be encouraging, it is extremely premature to reach the conclusion that these efforts will result in a satisfactory resolution of the issues raised by our correspondence.

We respectfully request that you reconsider your decision concerning our recommendation for the establishment of a Regulated Navigation Area. While we are



William H. Fels
Captain, U.S. Coast Guard
July 19, 2000
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very much encouraged by, and strongly support Commander Servidio's efforts to establish a safety plan, training program, and other standards for pilots in St. Thomas and St. Croix which are predicated on clear, unambiguous piloting standards, requirements and regulations, the establishment of such clear, unambiguous standards remains in the future. While the preliminary meetings held in St. Croix and St. Thomas hold promises for resolving these issues on a local level, it is clear that additional meetings and discussions will be necessary until such clear and unambiguous standards are drafted, adopted, enacted and implemented.

In view of the historic difficulties and past problems which have brought the situation in those ports to their present state, it appears highly premature to arbitrarily reject the necessity of a regulated navigation area based on an encouraging beginning to an alternative solution. The laws of the Virgin Islands have long required pilots on all vessels over 100 gross tons. The affidavits and information submitted with our applications unequivocally establish that the V. I. Port Authority is not consistently enforcing such a requirement for foreign flag vessels ranging from 8,000 to more than 100,000 tons. There is simply no rational basis under which foreign flag vessels can be allowed to operate without a pilot on board when U. S. law requires that U. S. flag vessels of a similar size and type operating on the same waters must have such a pilot on board without regard to the frequency with which they call at the port or their familiarity with the waters. No logical defense can be made of a policy which permits such arbitrary and capricious inconsistencies.

Please do not misunderstand our position. We strongly support Commander Servidio's efforts and will cooperate in every way to assist him in achieving his goals. We believe that if the Harbor Safety Committees are established and that appropriate safety plans, training programs and clear, unambiguous piloting standards, requirements and regulations are adopted by the Virgin Islands Port Authority through the Harbor Safety Committees, then your position that there is no need for a Regulated Navigation Area to establish pilotage standards will be well taken. However, we strongly believe that rather summarily rejecting our Application in the hope and anticipation that Commander Servidio's efforts will be successful, that the pendency of our request as an alternative solution should be maintained as some incentive to the Virgin Islands Port Authority and the other entities involved to engage in meaningful and constructive discussions to adopt such clear, unambiguous standards, requirements and regulations.

William H. Fels
Captain, U.S. Coast Guard
July 19, 2000
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Our position in this regard is supported by statements made by Commander Servidio during the meetings in St. Croix and St. Thomas to the effect that any consideration of an RNA is premature and that every effort to achieve the same ends through local efforts focused through the Harbor Safety Committee should be exhausted before an RNA should be considered. This is a position which we do not dispute and, in fact, support. However, the position taken in your letter of June 26, 2000 appears to summarily reject the possibility of an RNA without regard to whether or not local efforts are successful or, indeed, even undertaken.

Given the rather significant navigational safety issues and threats to the marine environment documented in our correspondence, it seems somewhat arbitrary to reject the concept out of hand based on what, at present, is a mere aspiration and expectation concerning an alternative solution.

We also invite your attention to the fact that, as pointed out in our correspondence, Congress has clearly expressed a policy of requiring federally licensed pilots on a foreign vessels engaged in domestic trade when there are circumstances where a pilot is not otherwise required by State law and has clearly provided the U.S. Coast Guard with the authority to establish such a requirement. Review of the alternative mechanisms provided to the U.S. Coast Guard, as discussed in the Marine Safety Manual, specifically, Vol. 6, Ch. 1, §J, indicates that the most appropriate mechanism for implementing such requirements would be a Regulated Navigation Area.

Accordingly, we would propose that rather than making a determination at this time that our proposal for a Regulated Navigation Area is neither warranted nor appropriate, that any action on our Application be suspended pending the outcome of Commander Servidio's efforts in St. Croix and St. Thomas. If nothing else, the pendency of our application as an alternative mechanism should provide Commander Servidio with additional leverage in his discussions with the Virgin Islands Port Authority and the other entities involved. However, if Commander Servidio enters into these negotiations with the Virgin Islands Port Authority with the Coast Guard having already determined that establishment of pilotage regulations through Coast Guard regulation is neither appropriate nor warranted, there would be little incentive on the part of the Virgin Islands Port Authority to maintain anything other than the "business as usual" which has led us to this highly unsatisfactorily situation in the first place.

As has been documented in our various correspondence, and supported by the Affidavits of the various Pilots involved, there have been a number of near misses,

William H. Fels
Captain, U.S. Coast Guard
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groundings, and other situations which pose a threat to navigational safety to the marine environment in both St. Croix and St. Thomas. Thus far, fortuitously, there have been no serious injuries and no serious damage to the marine environment resulting from this situation. However, any one of these "near misses" could have resulted in serious injury and serious damage to the marine environment and such an incident could occur at any time as long as the current situation is allowed to continue. Until such time as Commander Servidio has implemented his Harbor Safety Committees, and the appropriate safety plans, training programs and clear, unambiguous pilotage standards, requirements and regulations have been drafted, adopted and implemented, a premature determination that alternative solutions to the threat to navigational safety in the marine environment are neither warranted nor appropriate could prove extremely embarrassing to every one involved should one of these "near misses" develop into a significant marine casualty.

We would welcome the opportunity to discuss these issues with you in more detail. We would note, and invite your attention, to the fact that the Coast Guard's decision with regard to the appropriateness of this Application has been undertaken without any discussion whatsoever with either the drafter of the Application or the Pilots who submitted Affidavits in support of the Application for St. Thomas. Neither does there appear to have been any investigation, statistical analysis or other consideration by the U.S. Coast or the threat to navigational safety in the marine environment posed by this situation in taking action to reject consideration of our proposal despite the fact that no other regulations or standards have been adopted or implemented.

We further invite your attention to the fact that your letter of June 26, 2000 wholly fails to address another important aspect of our letters of March 3, 2000. Specifically, in addition to pilotage standards, both these letters pointed out the significant problems which arise on the waters addressed by our applications due to the fact that the Bridge to Bridge Radiotelephone Act does not apply on pilotage waters in either St. Croix or St. Thomas. The essence of our proposal is that vessels over 1600 gross tons be required to have someone on the bridge available to communicate in English and that vessels meeting, crossing or overtaken be required to communicate with other by radiotelephone to make arrangements for safe passage.

Given the fact that such bridge to bridge radiotelephone communications have been a core element of navigational safety programs and vessel traffic management in the United States for more than twenty-five years, it is very difficult to comprehend how such a fundamental safety consideration would not be considered equally important on

William H. Fels
Captain, U.S. Coast Guard
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the waters of the U. S. Virgin Islands. Although the rules themselves do not apply, the safety principles involved are clearly applicable.

Nor can it be said that a regulated navigation area is not an appropriate mechanism to implement such a requirement in view of the fact that the U. S. Coast Guard established an RNA in San Pedro, California to require virtually identical bridge to bridge communications on COLREGS waters. 46 CFR § 165.1109

At the Harbor Safety Committee meeting held in St. Thomas, the representatives of the U. S. Coast Guard acknowledged that where foreign flag vessels are involved, the establishment of such bridge to bridge radiotelephone communication requirements in the Virgin Islands might exceed the authority of the V. I. Port Authority, especially in light of the recent Supreme Court decision in *Locke v. United States*, and may well require an RNA to enact such a requirement.

Based, therefore, on the bridge to bridge radiotelephone communication aspect of the RNA application alone, your position concerning our application appears to be premature and should be re-considered.

Specifically, the Coast Guard should hold any action on our application in abeyance pending the outcome of local efforts to resolve these matters through the Harbor Safety Committees. Should the V. I. Port Authority adopt recommendations of these committees which result in clear, unambiguous pilotage standards, requirements and regulations, that aspect of our application may well become moot. Based on the discussions which have occurred in St. Croix and St. Thomas thus far, it appears, however, that the Harbor Safety Committees will probably support our position that bridge to bridge radiotelephone requirements will be an important part of any harbor safety plans adopted. Given the Coast Guard's previous position that an RNA is the appropriate mechanism to enact such a requirement on COLREGS waters, your decision that an RNA to enact such a requirement is neither warranted or appropriate appears to be pre-mature.

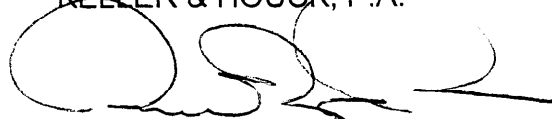
We would, therefore, appreciate the opportunity to have a meeting and discussion on these issues. We look forward to hearing from you both with regard to whether or not there will be any reconsideration of your decision pending the outcome of Commander Servidio's efforts in the Virgin Islands and whether we will be afforded the opportunity to discuss these issues with you in more detail. We would request your response as to whether our application will be held in abeyance prior to July 26, 2000 in order that we

William H. Fels
Captain, U.S. Coast Guard
July 19, 2000
Page 6

take appropriate action to protect our clients' interests. We look forward to hearing from you at your earliest convenience.

Very truly yours,

KELLER & HOUCK, P.A.

A handwritten signature in black ink, appearing to read 'Andrew W. Anderson', written over the firm name.

Andrew W. Anderson

AWA/pg
Cc: Joel Glanstein
General Counsel, AMO

ANDERSON & ASSOCIATES
A PROFESSIONAL ASSOCIATION

ANDREW W. ANDERSON
ERIN E. DARDIS
DAVID N. GAMBACH
JERRY D. HAMILTON
ALEC J. HARALAMBIDES
EDWIN E. HIGHTOWER, JR.
MARK R. HOUCK
JOSEPH W. JANSSEN
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JENNIFER A. KERR

DAGMAR LLAUDY
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Reply to: Miami Office

July 26, 2000

From: Andrew W. Anderson, Esquire, on behalf of Pilots John Amaro, Donald Jeffrey, Robert Ripley, Eric Robinson, James Clifford, Anthony Mongiello, John O'Reilly and Douglas Mackay

To: Commandant of the U.S. Coast Guard (G-MWV)

Via: Chief, Marine Safety Division, Seventh Coast Guard District

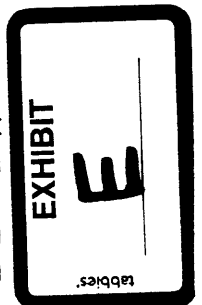
Subject: Appeal of Denial of Request for Establishment of Regulated Navigation Area

Re: 33 U.S.C. §§1225, 1231
Part 165 of 33 Code of Federal Regulations
Chapter 1, Volume VI of the Marine Safety Manual

Encls: (1) Request for Establishment of Regulated Navigation Area on the waters of St. Thomas Harbor, U.S. Virgin Islands (March 3, 2000)
(2) Request for Establishment of Regulated Navigation Area on certain waters of St. Croix, U.S. Virgin Islands (March 3, 2000)
(3) June 19, 2000 Letter of Commander Servidio
(4) June 26, 2000 Letter of Captain William Fels
(5) July 19, 2000 Request for Reconsideration (Captain Fels)

This letter serves as an appeal, pursuant to 33 C.F.R. §160.7, from the Commander, Seventh Coast Guard District, denying two separate requests for the establishment of regulated navigation areas on the waters of St. Thomas Harbor, U.S. Virgin Islands, as well as certain waters in and around St. Croix, U.S. Virgin Islands.

On March 3, 2000 we filed an application with the Commander, Seventh Coast Guard District, on behalf of the aforementioned individuals for the establishment of a regulated navigation area on the designated waters of St. Thomas and St. Croix, U.S. Virgin Islands, within which certain vessels would be required to be under the direction and control of a pilot license pursuant to the provisions of 46 U.S. Code §7101. In



addition, we also requested that the regulated navigation area, in essence, required those vessels required to be under the direction and control of a pilot, to meet the requirements of the Bridge to Bridge Radio Telephone Act.

The reasons underlying this application are twofold. First and foremost, the applicants, all licensed, first class pilots for the pertinent waters of St. Croix and St. Thomas, have extensive familiarity with the navigational safety conditions which they face in pilotage situations on these waters on a daily basis. They are extremely concerned about the lack of mandatory bridge to bridge radio telephone regulations. They are also concerned about a number of near miss situations and groundings which did not result in significant damage but could easily have.

The regular arrival and departure of cargo and passenger vessels of significant size without a licensed, first class pilot on board and without any mandatory bridge to bridge radio telephone communication requirements, prevents a very real possibility of a serious grounding or collision. Given the environmentally sensitive nature of the confined waters in the Virgin Islands, and the thousands of passengers carried on modern cruise ships, should one of these near misses turn into an actual collision or grounding, the potential for environmental damage and personal injury is staggering.

Accordingly, the pilots of St. Croix and St. Thomas have recognized a need for clear, unambiguous pilotage regulations and standards for the waters in and around the Virgin Islands. Indeed, the need for such clear and unambiguous standards is the second purpose underlying the request, inasmuch as they wish to formulate and develop a safety plan, training program and other standards for pilots which must necessarily be predicated on clear, unambiguous pilotage standards, requirements and regulations.

The requests for establishment of the two regulated navigation areas were sent to Rear Admiral Allen, the Commander of the Seventh Coast Guard District, on March 3, 2000. On June 19, 2000 and June 26, 2000, duly authorized personnel of the Seventh Coast Guard District rejected the request to establish the two regulated navigation areas. On July 19, 2000 the undersigned, on behalf of the aforementioned pilots, requested the Chief, Marine Safety Division of the Seventh Coast Guard District reconsider the decision that a permanent regulated navigation area was not warranted. As of the date of this letter, the District Commander has not responded to our request for reconsideration. Accordingly, out of an abundance of caution, we file this appeal to the Commandant.

THE REQUESTS

As set forth in detail in the two requests for establishment of regulated navigation areas (March 3, 2000), the Virgin Islands Port Authority, by its own regulations, as well as in practice, does not require all vessels arriving, departing or operating on the waters of St. Thomas or St. Croix to have a pilot on board or be under the direction and control of a pilot. As a result, a number of vessels, many quite large, arrive and/or depart the Virgin Islands without a pilot on board. While there have been no major impacts, as yet, on the safety of life or damage to the environment, there have been a number of near misses. Accordingly, it is only a matter of time until a major incident involving serious injury, loss of life and/or a significant threat of damage to the environment occurs in and around the waters of the Virgin Islands.

The Chief, Marine Safety Division of the Seventh Coast Guard District as well as the COTP San Juan opine that permanent regulated navigation areas are neither warranted nor an appropriate mechanism to address the concerns that vessels are traversing the waters of the Virgin Islands without pilots on board. This decision by the District Commander's representative is based to a large extent on the encouraging preliminary meetings which have been held in St. Croix and St. Thomas toward the establishment of a harbor safety committee. While initial responses to these efforts may be encouraging, it is extremely premature to reach the conclusion that these efforts will result in a satisfactory resolution of the issues raised in our request for establishment of regulated navigation areas. Additional meetings and discussion are necessary until such clear and unambiguous standards are drafted, adopted, enacted and implemented.

The premature and speculative nature of these meetings is highlighted by the historic difficulties and past problems in St. Croix and St. Thomas which have brought the situation in those ports to their present state. The laws of the Virgin Islands have long required pilots on all vessels over 100 gross tons. However, as established by the affidavits and information submitted with the request for establishment of regulated navigation areas, the Virgin Islands Port Authority is not consistently enforcing such a requirement for foreign flag vessels ranging from 8,000 to more than 100,000 tons. Further, there is no rational basis under which a foreign flag vessel can operate without a pilot on board while U.S. law requires similar sized U.S. flag vessels operating on the same waters to have a pilot on board, without regard to the frequency with which they call at the port or their familiarity with the waters. There can be no logical explanation made of a policy which permits such arbitrary and capricious inconsistencies.

We invite your attention to the fact, as pointed out in the request, Congress has clearly expressed a policy of requiring federally licensed pilots on all foreign vessels engaged in domestic trade when there are circumstances that a pilot is not otherwise required by state law. Congress has clearly provided the U.S. Coast Guard with the authority to establish such a requirement. Review of the alternative mechanisms provided to the U.S. Coast Guard, as discussed in the Marine Safety Manual and Chapter 33 of the Code of Federal Regulations, indicates that the most appropriate mechanism for implementing such requirements would be a regulated navigation area. According to Volume 6, Chapter I, Section J of the Marine Safety Manual:

A regulated navigation area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established by the District Commander under the authority of the PWSA and 33 C.F.R. 165.11. It is an area that requires control of vessel operations to preserve the safety of the adjacent waterfront structures, to ensure safe transit of vessels, or to protect the marine environment. For example, an RNA may be established to provide for safety of navigation when conditions require higher standards of control than that provided by the navigation rules....

An RNA should be distinguished from a COTP order issued under the authority of 33 C.F.R. 160. The primary difference is that an RNA is established by regulation, whereas the COTP order is not. An "order" is the appropriate means to control individual vessel movement when the hazard is an immediate one caused by an explosion, grounding, attempted blockade, or large oil spill. . . . Where a hazardous condition exists that requires control of a number of vessels, the establishment of an RNA or safety zone is appropriate. . . . RNAs are typically established when extensive vessel controls are needed over an extended period of time.

The analysis within the Marine Safety Manual makes it clear that a regulated navigation area is more appropriate than a safety zone or security zone to establish long term control of vessel operations particularly when foreign flag vessels are involved. While the regulation and oversight of local pilots is often a matter of local concern, Congress has provided the United States Coast Guard with the specific authority to require federally licensed pilots on any self-propelled foreign or domestic vessels in areas under circumstances when a pilot is not otherwise required by state law. Congress further provided that any such requirement should be terminated when the state having jurisdiction over the area involved establishes the requirement for a state licensed pilot and has so notified the Secretary. As set forth in more detail in our request for the

establishment of the regulated navigation areas dated March 3, 2000, there can be no doubt that the United States Coast Guard has a regulatory authority delegated to the District Commander, to require federally licensed pilots on foreign vessels where a pilot is not otherwise required by state law. Accordingly, the appropriate means for the United States Coast Guard to exercise its authority on these waters by requiring foreign flag vessels to be under the direction and control of federally licensed pilots is through a regulated navigation area.

Given the fact that it was the United States Coast Guard who first identified and raised the need for clear, unambiguous, enforceable and local pilotage regulations for the subject waters, we are somewhat surprised that the Coast Guard would deny our request for the establishment of the two regulated navigation areas. Moreover, since the protection of lives and the environment is a primary mission of the U.S. Coast Guard, we believe the U.S. Coast Guard should not hesitate in enacting a regulated navigation area as requested in our March 3, 2000 correspondence.

Additionally, at a recent Harbor Safety Committee meeting held in St. Thomas, the representatives of the United States Coast Guard acknowledged that where foreign flag vessels are involved, the establishment of such bridge to bridge radio telephone communication requirements in the Virgin Islands might exceed the authority of the Virgin Islands Port Authority, especially in light of the recent Supreme Court decision in Locke v. United States. Given the fact that such bridge to bridge radio telephone communications have been a core element of navigational safety programs and vessel traffic management in the United States for more than 25 years, it is very difficult to comprehend how such a fundamental safety consideration would not be considered equally important on the waters of the U.S. Virgin Islands. Although the rules themselves do not apply, the safety principles involved are clearly applicable. As such, the only plausible and enforceable means to require foreign flag vessels to follow the mandatory bridge to bridge radio telephone regulations is by the use of an RNA.

CONCLUSION

Based on the foregoing, as well as the enclosures with this appeal, the most prudent course of action for the U.S Coast Guard is to establish the RNAs as requested. However, should the U.S. Coast Guard feel a permanent regulated navigation area is not warranted as the current discussions in St. Thomas and St. Croix may prove to be fruitful, we nevertheless believe that the U.S. Coast Guard should issue a temporary regulated navigation area, as contemplated by the Marine Safety Manual, to minimize the potential for a major incident on the waters of the Virgin Islands which could pose a threat to the environment and the lives of individuals. To date, no clear-cut local regulations or

procedures have been developed to deal with the problems raised in the request for the establishment of regulated navigation areas. Thus, the only appropriate means of insuring all vessels that transit the waters of the Virgin Islands are under the direction and control of appropriately licensed pilots and are complying with the bridge to bridge radiotelephone regulations is to establish a regulated navigation area requiring all vessels, regardless of flag state, to carry a U.S. Coast Guard licensed pilot.

While permanent RNA's are typically established through the normal rule making process of notice and comment, temporary RNA's may be established as immediate emergency measures to respond to emerging, unanticipated events. Thus, the Coast Guard Marine Safety Manual grants the District Commander the authority to enact a temporary RNA without the need for the usual notice and comment periods. This authority should satisfy the concerns of the District Commander and COTP, San Juan that public rule making in the form of a permanent regulated navigation area is neither warranted nor appropriate while allowing the local regulatory process to continue.

Therefore, we request the Commandant to reconsider our request for the establishment of regulated navigation areas in the waters of St. Thomas and St. Croix, U.S. Virgin Islands, as the establishment of such areas will minimize the potential impact of any collisions or groundings that might arise from vessels operating on those waters not under the direction and control of a federally-licensed pilot or due to their failure to communicate in accordance with the bridge to bridge radio telephone regulations. In the alternative, if the Commandant is unwilling to over-rule the District Commanders decision, the undersigned requests the Commandant refrain from making a final decision on this matter pending the outcome of local regulations.

Respectfully,

KELLER & HOUCK, P.A.


Andrew W. Anderson

AWA:chg

U.S. Department
of Transportation

United States
Coast Guard



Commander(m)
Seventh Coast Guard District

COPY

AUG 02 2000

900 S.E. First Ave. RM 808
Miami, FL 33131-3050
Staff Symbol: mc
Phone: 305 415-6860
FAX: 305 415-6875

5800
July 31, 2000

Mr. Andrew Anderson
Keller & Houck, PA
200 South Biscayne Blvd. Suite 3460
Miami, FL 33131-5308

Dear Mr. Anderson:

This is in response to your letter dated July 19, 2000 requesting that I reconsider my decision denying your request for establishing regulated navigation areas in St. Thomas and St. Croix to require mandatory federal pilotage and bridge to bridge radio telephone communications.

I am glad that you also support Marine Safety Office (MSO) San Juan's efforts to address these local pilotage issues, including safety, training and developing appropriate standards and regulations. Efforts to establish Harbor Safety Committees and have these committees address local navigational vessel safety issues have been very successful. However, if it appears the committees are unable to resolve local navigational vessel safety issues, then the Coast Guard may elect at that time to revisit the need to establish mandatory regulations.

If it is determined that mandatory pilotage is needed to ensure safe vessel navigation the appropriate mechanism is through amendment to 46 CFR Part 15, vice establishing a regulated navigation area.

I have also asked MSO San Juan to include bridge to bridge radio communications in their discussions among port stakeholders. If it is determined that mandatory bridge to bridge radio communications is needed, then the appropriate mechanism may be through the establishment of a regulated navigation area.

I have received your appeal to Commandant and will forward it along with this response. I fully understand the various positions you have presented in your four detailed letters on this issue, and therefore believe that a meeting is unnecessary at this time.



However, if you still desire a meeting, please contact Lieutenant Commander Kirk of my staff or myself at the above phone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'William H. Fels', with a large, stylized flourish extending from the end of the signature.

WILLIAM H. FELS

Captain, U.S. Coast Guard

Chief, Marine Safety Division

Seventh Coast Guard District

By direction of the District Commander

Copy: Marine Safety Office San Juan
Virgin Island Port Authority
Commandant (G-MWV), (G-LMI)

COPY

OCT 30 2000

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street SW
Washington DC 20593-0001
Staff Symbol: G-MW
Phone: 202-267-6164
FAX: 202-267-4700

5800

OCT 25 2000

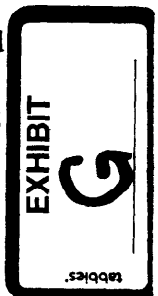
Mr. Andrew W. Anderson
Keller & Houck
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131-2332

Dear Mr. Anderson:

I have reviewed your appeal dated July 26, 2000 of the Commander, Seventh Coast Guard District's decision to deny your request that a regulated navigation area (RNA) be established in the U.S. Virgin Islands. Based upon my review I am satisfied the District Commander's decision was correct. Therefore, I am denying your appeal. Insofar as this appeal was submitted in accordance with the provisions of 33 C.F.R. § 160.7, this decision constitutes final agency action. *See* 33 C.F.R. § 160.7(c).

An RNA is not the preferred means of establishing pilotage requirements under the authority of 46 U.S.C. § 8503(a). The preferred means is a rule codified in 46 C.F.R. Part 15, Subpart I, which contains Federal pilotage regulations for vessels engaged in foreign commerce. In your letter of August 29, 2000 to the Commander, Seventh Coast Guard District, you questioned whether regulations in Subpart I are applicable to foreign-flagged vessels. Regulations in Part 15 "apply to all vessels...subject to the manning requirements contained in the navigation and shipping laws of the United States...(46 U.S.C. 7101 - 9308)," 46 C.F.R. § 15.103(a). The referenced portions of the navigation and shipping laws of the United States includes sections that are applicable to foreign-flag vessels, including those addressing pilotage requirements. With the exception of vessels in coastwise trade, which are exclusively U.S.-flag, the states may establish pilotage requirements for foreign-flag and U.S.-flag vessels sailing under register, i.e. vessels engaged in foreign trade or commerce. *See* 46 U.S.C. §§ 8501(a) and 8502(a). The Coast Guard "may require a pilot licensed under section 7101 of this title...when a pilot is not required by State law and the vessel is engaged in foreign commerce...." 46 U.S.C. § 8503(a). Therefore, the pilotage regulations in 46 C.F.R. Part 15, Subpart I are applicable to foreign-flag vessels as well as U.S.-flag vessels sailing under register.

Based on my review of the material included in your appeal I understand you feel existing pilotage requirements in the U.S. Virgin Islands are not adequate to promote maritime safety and to protect the marine environment. I also understand that the Captain of the Port (COTP) San Juan has been working to address local pilotage issues, including safety, training and developing appropriate standards and regulations. I will evaluate the necessity of establishing Federal pilotage requirements for the U.S. Virgin Islands if requested by Commander, Seventh Coast



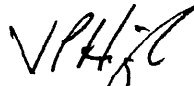
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Guard District and the COTP San Juan. If you chose, you may petition the Coast Guard to undertake a rulemaking project to establish Federal pilotage regulations for vessels engaged in foreign commerce that are operating on the navigable waters of the United States located within the U.S. Virgin Islands. The guidelines for making such a petition are in 33 C.F.R. § 1.05-20. If such a petition is received, the Executive Secretary of the Marine Safety Council will forward it to my office for consideration.

As you are aware, the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. §§ 1201, *et seq.*) is, with certain exceptions, applicable 3 miles seaward of the baseline from which the territorial sea is measured. 46 C.F.R. § 7.5(a). As provided by the Organic Act of the Virgin Islands of the United States, "[e]xcept as otherwise expressly provided, all laws of the United States for the protection and improvement of the navigable waters of the United States shall apply to the Virgin Islands." Ch. 699 § 4, 49 Stat. 1808 (codified at 48 U.S.C. § 1405c(b)). In accordance with the 1939 amendments of the Organic Act (Ch. 515, 53 Stat. 1242), the President declared, with certain exceptions not material to this matter, that "all of the navigation and vessel inspection laws of the United States are applicable to the [U.S.] Virgin Islands." Executive Order 9170, 7 FR 3842 (May 23, 1942). Neither the Vessel Bridge-to-Bridge Radiotelephone Act nor its implementing regulations exempt vessels operating on the navigable waters of the United States located within the U.S. Virgin Islands. See 33 U.S.C. § 1206 and 33 C.F.R. § 26.09. Therefore, I am satisfied it is not necessary to establish an RNA in order to make the requirements of the Vessel Bridge-to-Bridge Radiotelephone Act applicable to vessels operating on the navigable waters of the United States located within the U.S. Virgin Islands.

I appreciate your desire to improve the safety of navigation. I encourage the pilots you represent to participate in the harbor safety committees being established by COTP San Juan in St. Thomas and St. Croix. Although I understand that the members of harbor safety committees will not always agree, these committees are an effective forum for port users to meet and discuss mutual safety, mobility and environmental protection issues. Please contact LT Alan Blume at 202-267-0550 or ablume@comdt.uscg.mil if you have any questions regarding this matter.

Sincerely,



JEFFREY P. HIGH
Director of Waterways Management
U.S. Coast Guard

Copy: Commander, Seventh Coast Guard District
Commanding Officer, U.S. Coast Guard Marine Safety Office San Juan

U.S. Department
of Transportation

United States
Coast Guard



Commanding Officer
U.S. Coast Guard
Marine Safety Office San Juan

JUN 26 2000

COPY

P.O. Box 71526
San Juan, PR 00936-8626
Staff Symbol:
Phone: (787) 706-2400
FAX: (787) 706-2408

5800
June 19, 2000

Mr. Andrew W. Andersen
Keller & Houck
200 South Biscayne Boulevard
Suite 300
Miami, FL 33131-2332

Dear Mr. Andersen:

Thank you for your letter dated May 22, 2000, regarding a request for a Regulated Navigation Area (RNA) in the waters of St. Thomas Harbor, U. S. Virgin Islands. Let me assure you that I am most concerned with the safe navigation of all waterways under my jurisdiction and am committed to reducing any associated risks to the maximum extent possible.

In order to address these risks, I agree that there needs to be a safety plan, training program and other standards for pilots in St. Thomas and St. John which must be predicated on clear, unambiguous pilotage standards, requirements and regulations. At this time, however, I do not agree that a public rulemaking in the form of a federal RNA is an available or appropriate tool to use. Almost universally, regulation and oversight of local pilots is a matter of local jurisdiction; I believe that it should remain so. While it is clearly my duty to be involved in all maritime safety issues within my area of responsibility, it is not my intent to usurp the authority of local entities. Rather, I intend to assist the Virgin Island Ports Authority as we are presently doing with the Puerto Rico Ports Authority/Pilotage Commission in developing an effective safety plan, training program and standards for pilots as mentioned previously.

I have met with the St. Croix pilots and have initiated a Harbor Safety-type committee there to develop consensus-based safety standards. Later this month I intend to meet with Virgin Islands Ports Authority and St. Thomas pilots to establish a similar committee to address safety issues and develop safety standards. I am confident that collectively we can arrive at a solution that effectively reduces risk to the satisfaction of all parties involved.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Servidio", written over a horizontal line.

J. A. SERVIDIO
Commander, U. S. Coast Guard
Captain of the Port San Juan

Copy: Commander, Coast Guard Seventh District (m)
San Juan Bay Pilots Corporation
Puerto Rico Harbor Pilots Association



SEP 09 '00 03:42PM VIRGIN ISLANDS MARINE DIV.

P. 1



VIRGIN ISLANDS PORT AUTHORITY

POST OFFICE BOX 2216

CHARLOTTE AMALIE, ST. THOMAS, VIRGIN ISLANDS, U.S.A. 00803

OFFICE OF THE MARINE MANAGER

September 8, 2000

Mr. Eric Robinson
St. Thomas Pilot Representative, HSC
AMO Shop Steward
Edward W. Blyden Marine Terminal
St. Thomas, VI 00801

Dear Mr. Robinson:

This is in response to your letter of August 18, 2000 (received while I was on vacation). Please be advised that the Marine Rules and Regulations (Section 131-12) Pilots and movement of vessels; anchorage) do not currently mandate pilot service aboard vessels greater than 100 gross registered tons.

Virgin Islands Port Authority policy, in keeping with the tenor of the Regulations, provides pilot service to any vessel in excess of 100 gross registered tons that formally request such service. That is the current policy, and it is the policy the Port Authority expects its pilots to follow unless and until there is a change in the Regulations.

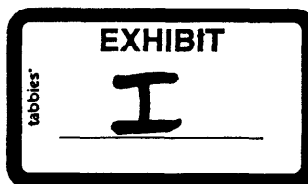
Finally, I feel compelled to point out to you that pilots are not authorized to make unilateral changes in the Port Authority's policy. Any effort to do so will be dealt with in an appropriate forum.

Sincerely,

Maria Walters
Maria Walters
Marine Manager

pc: Executive Director
Legal Counsel
A.M.O. Representative
Personnel Manager

TELEPHONES: (809) 774-2250, 774-2333



CABLE ADDRESS: VI PORT

KELLER & HOUCK
A PROFESSIONAL ASSOCIATION

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101 GEORGE KING BOULEVARD
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Reply to: Miami Office

September 13, 2000

Via Telefax

Ms. Maria Walters
Marine Manager
Virgin Islands Port Authority
P. O. Box 2216
Charlotte Amalie
St. Thomas, U.S. Virgin Islands 00803-2216

Re: U.S. Virgin Islands Pilot Association
Our File No.: 41312-MRH

Dear Ms. Walters:

Pilot Eric Robinson of the St. Thomas Pilots has forwarded to us a copy of your letter of September 8, 2000 responding to his letter of August 18, 2000 concerning pilot service aboard vessels greater than 1600 gross tons. In order to avoid any misunderstanding as to the policy statement set forth in that letter, we wish to take this opportunity to confirm with you our understanding of the policy set forth in that letter and to request your confirmation that our understanding is correct.

As set forth in Mr. Robinson's letter of August 18, 2000, under the auspices of the United States Guard Marine Safety Detachment in St. Thomas, and under the overall supervision of the Captain of the Port, a Harbor Safety Committee has been meeting at the U.S. Coast Guard facility to foster discussion and consensus of port users with regard to traffic control and navigational safety issues in the St. Thomas Harbor. In addition to representatives of the Virgin Islands Port Authority, representatives of the U.S. Coast Guard and representatives of the St. Thomas Pilots, representatives from the various user groups in St. Thomas Harbor have regularly met and discussed various issues with regard to navigational safety and vessel traffic management.

During the course of several meetings over the last months, one of the issues discussed by the Harbor Safety Committee was improvement of navigational safety by having pilots onboard all vessels entering and leaving St. Thomas Harbor when the vessel size meets or exceeds 1600 gross tons. It was the consensus of the various user groups, including representatives from Tropical Shipping, representatives from Crowley Maritime and other port users, that such a practice would not only be desirable from the

EXHIBIT

5/11/01

navigational safety and vessel traffic management point of view, but would also be consistent with the Virgin Island Marine Rules and Regulations with regard to pilots on vessels of this size.

Accordingly, as set forth in his letter of August 18, 2000 Mr. Robinson wrote to you with regard to this consensus and advised you that the pilots would commence providing those pilot services as requested, "in compliance with the consensus of the Harbor Safety Committee."

By your letter of September 8, 2000, you have stated that the Virgin Islands Marine Rules and Regulations do not currently mandate pilot service aboard vessels greater than 100 gross registered tons. (Emphasis in the original).

Accordingly, it is our understanding of the policy of the Virgin Islands Port Authority, as well as their interpretation of the Marine Rules and Regulations, that pilotage aboard vessels greater than 100 gross tons entering and leaving the Port of St. Thomas is not mandatory. Rather, it is the policy and regulatory interpretation of the Virgin Islands Port Authority that pilotage aboard such vessels is voluntary and that pilot service will only be provided to vessels that formally request such service. Further, it is the policy of the Virgin Islands Port Authority that any vessel, including vessels in excess of 100 gross tons, that wishes to enter or depart the Port of St. Thomas without a pilot onboard may do so at its own discretion.

We believe that is a fair and accurate interpretation of the policies set forth in your letter of September 8, 2000. However, in order to avoid any misunderstanding, of that policy, as stated in your letter, we wish your confirmation, in writing, that our interpretation and understanding is correct.

In the final paragraph of your letter, you state that you "...feel compelled to point out to you that pilots are not authorized to make unilateral changes in the Port Authority's policy. Any effort to do so will be dealt with in an appropriate forum." We interpret this language to state that the action proposed by Mr. Robinson's letter of August 18, 2000 is viewed by the Port Authority as a "unilateral change" in the Port Authority's policy. Inasmuch Mr. Robinson took great pains to state in his letter of August 18, 2000 that such a policy was the consensus of the Harbor Safety Committee, we wish to inquire as to the position of the Virgin Islands Port Authority with regard to the effect, if any, of such a consensus or recommendation of the Harbor Safety Committee with regard to navigational safety and vessel traffic management issues. It would appear from the language of your letter of September 8, 2000 that it is, and will be, the policy of the Virgin

Islands Port Authority that it will decide for itself how to interpret and implement the Marine Rules and Regulations without regard or reference to any recommendations or consensus of the Harbor Safety Committee.

If this is an accurate interpretation and understanding of the position of the Virgin Islands Port Authority, we would request that you confirm that to us in writing. If it is the position of the Virgin Islands Port Authority that it will not accede to, follow or implement the recommendations of the Harbor Safety Committee with regard to navigational safety and vessel traffic management issues, notwithstanding the fact that such recommendations constitute a consensus of the port users, then is important that we understand that position. Further, if it is the position of the Virgin Islands Port Authority that it will not adopt regulations based on the recommendations of the Harbor Safety Committee with regard to navigational safety and vessel traffic management issues, then we will refrain from communicating such recommendations to you in the future. We see no point in communicating the recommendations and consensus of the Harbor Safety Committee to the Port Authority if the Port Authority has no interest in adopting them or acceding to such a consensus.

Accordingly, therefore, we would appreciate a written statement from the Virgin Islands Port Authority with regard to whether or not it intends to make a commitment to adopt and implement by regulatory changes any further recommendations of the Harbor Safety Committee with regard to navigational safety and vessel traffic management in St. Thomas Harbor. If the Virgin Islands Port Authority has no such intention, and, indeed, will not make a commitment to adopt and implement such recommendations when such a consensus is achieved, then we will refrain from communicating with you concerning such recommendations.

We look forward to hearing from you in the very near future, both with regard to your written confirmation as to whether our understanding and interpretation of the policy concerning pilot services set forth in your letter of September 8, 2000 is correct. We also look forward to hearing from you in the near future with regard to a written confirmation as to whether or not our understanding of the policy of the Virgin Islands Port Authority as to the effect, or the lack therefore, as to a recommendation and consensus of the Harbor Safety Committee with regard to navigational safety and vessel traffic management issues.

Please note that if we do not hear from you within thirty (30) days of the date of this letter, we will assume that our interpretation of your policy with regard to the provision of pilot services on vessels in excess of 1600 gross tons is correct. Similarly, if we do not

Virgin Islands Port Authority
September 13, 2000
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hear from you within thirty (30) days from the date of this letter with regard to the accuracy of our understanding of your position concerning whether or not the Virgin Islands Port Authority will consider itself obligated to adopt or implement recommendations of the Harbor Safety Committee we will also assume that our interpretation and understanding is correct. Thereafter, we will govern ourselves accordingly.

We look forward to hearing from you at your earliest convenience and, in any case, within thirty (30) days from the date of this letter. In the interim, please do not hesitate to contact us if you have any questions or wish to discuss any aspect of this letter in more detail.

Very truly yours,

Keller & Houck, P.A.


Andrew W. Anderson

AWA/pg

cc: AMO
Attn: Mr. Thomas Kelly

St. Thomas Harbor Pilots
Attn: Mr. Eric Robinson



VIRGIN ISLANDS PORT AUTHORITY

Post Office Box 301707

ST. THOMAS, VIRGIN ISLANDS U.S.A. 00803-1707

FAX (809) 774-0025 • TEL: (809) 774-1629

SEP 21 2000

September 18, 2000

Andrew W. Anderson, Esq.
Keller & Houck, P.A.
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131-2332

**Re: U. S. Virgin Islands Pilot Association
Your File No. 41312-MRH**

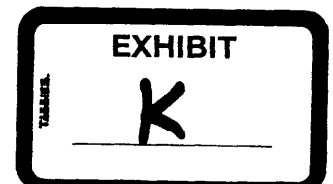
Dear Attorney Anderson:

Executive Director Gordon Finch has requested that I respond to your September 13, 2000 letter to our Marine Manager, Maria Walters.

So that there is no misunderstanding as to the Port Authority's position and/or interpretation of existing Regulations, pilotage will be provided for any vessel in excess of 100 gross tons requesting same, unless the vessel falls into one or another of the "mandatory" categories (e. g. carrying explosives), or unless the Marine Manager determines that pilotage should be provided because of circumstances. Otherwise, only upon request of the vessel will pilotage be provided.

Second, with regard to the issue of the Port Authority's position *vis a vis* recommendations forwarded to it by the Harbor Safety Committee, please be advised that the Port Authority does not in any way commit itself to adopting or implementing blindly any recommendation submitted to it by the Committee. Any such recommendation will be reviewed by the Port Authority on a case by case basis before action, if any, is taken.

Third, I wish to point out to you that the Port Authority has not received any recommendation from the Harbor Safety Committee. Our Marine Manager advises that Lt. Kevin Smith expressed surprise when shown a copy of Mr. Robinson's letter of August 18, 2000, stating further that neither he, nor to his knowledge anyone from the Coast Guard, authorized or requested that Mr. Robinson author the letter in question. I need not point out to you the inappropriateness of Mr. Robinson's unauthorized communication of a "recommendation" from the Harbor Safety Committee which was essentially a discussion among some of its members. Worse yet, the issuance of an ultimatum to the Port Authority which, in effect, stated pilots would take unilateral action regarding a matter over which they have no authority if the Port Authority does not take action on what the pilots have, without authority, identified as a recommendation of the Harbor Safety Committee.



LETTER TO KELLER & HOUCK
RE: HARBOR SAFETY COMMITTEE
SEPTEMBER 18, 2000
PAGE 2

I trust that this sufficiently clears up the issues you raised in your letter. If there is any further information you might need please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Don C. Mills". The signature is fluid and cursive, with the first name "Don" and last name "Mills" clearly distinguishable.

Don C. Mills
Legal Counsel

cc: Executive Director
Marine Manager (STT)

C:\MyFiles\Response to Keller & Houck 9-13-00 letter.wpd

Memorandum

Subject: MEMORANDUM

Date: 15 March 2001

From: Commanding Officer, Marine Safety Office San Juan

Reply to: CO
Attn of: CDR J. A. Servidio
(787)706-2401

To: REC Miami

Ref: (a) 46 CFR Subchapter B, Part 10

Subject: REQUIREMENTS FOR FEDERAL PILOTAGE IN PORTS WITHIN THE MSO
SAN JUAN AOR

1. Federal Pilots serving the ports of Puerto Rico and the U.S. Virgin Islands hold unique responsibilities. The island's ports are vital to the people, the resources and the economies of not just Puerto Rico and the Virgin Islands but the entire Caribbean. It is critical that we ensure that Federal Pilots have the requisite knowledge, skills and experience to successfully carry out their responsibilities. One of the existing pre-requisites for obtaining a Federal First Class Pilot's Endorsement, holding a valid Third Mate's License, does not reflect the unique and critical nature of piloting vessels into or out of the Ports in Puerto Rico and the U.S. Virgin Islands. A higher level of skill and experience is required.
2. As such, merchant mariner's requesting a Federal First Class Pilot License or Endorsement shall have, in addition to the regulatory standards and as a pre-requisite for evaluation and testing, one of the following:
 - A valid Coast Guard issued Second Mate's License with proof of sea time having sailed as a Second Mate, having made at minimum one voyage of at least 30 days duration, or
 - A valid Coast Guard issued Master 1600 Gross Tons License with proof of sea time having sailed as a Master of towing vessels with a minimum of 720 days as Operator or Master of harbor assist towing vessels.
3. These License limitations have been imposed commensurate with the experience required with respect to the route and waters of all Ports in Puerto Rico and the U.S. Virgin Islands. They shall become effective immediately.

J. A. SERVIDIO

